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TRANSCRIPT OF RECORD

FILED
FEB 25 1958
JOHN T. FEY, Clerk

UNITED STATES
COURT OF APPEALS
FIFTH CIRCUIT.

No. 16,320

JOSEPH TOMLEY,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Middle District of Georgia.

(ORIGINAL RECORD RECEIVED OCT. 25/56.)
U. S. COURT OF APPEALS
FILED
MAY 7 1957

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IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA, MACON DIVISION.

Criminal No. 7262.

JOSEPH TOMLEY,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appearances.

Mr. L. Eugene Jessup, Attorney at Law, Macon, Georgia, and Mr. Wallace Miller, Jr., Attorney at Law, Macon, Georgia, Attorneys for Appellant.

Mr. Frank O. Evans, U. S. Attorney, Macon, Georgia, and Mr. Floyd M. Buford, Assistant U. S. Attorney, Macon, Georgia, Attorneys for the Appellee.

APPEAL from the District Court of the United States for the Middle District of Georgia, Macon Division, to the United States Court of Appeals for the Fifth Circuit, returnable at the City of New Orleans, Louisiana.

In the District Court of the United States for the Middle District of Georgia, Macon Division.

United States of America,
vs. Indictment No. 7262.
Joseph Tomley, Andrew Jackson Wright.

Violation: 18 USC 371 In Connection With 18 USC 641; and 18 USC 641.

The Grand Jury Charges:

Count I.

That Andrew Jackson Wright and Joseph Tomley, whose further given names are to the grand jurors unknown, and who are hereinafter referred to as the defendants, from on or about November 1, 1954, and continuously thereafter up to and including May 10, 1955, within the Macon Division of the Middle District of Georgia and within the jurisdiction of this Court, and with the intent to defraud the United States, did, unlawfully, wilfully, knowingly, and feloniously combine, conspire, confederate, and agree together and with each other and with divers other persons to the grand jurors unknown, to steal, purloin, and knowingly convert to their own use, and without authority to sell, convey, and dispose of, property of the United States, to wit: Scintilla breaker assemblies having platinum points thereon, American-Bosch breaker point springs having platinum points, motor gun chargers, sometimes described as motor timer guns, and aircraft spark plugs having platinum points, having a value of at least $6,800.00; and to receive, conceal, and retain such property with intent to convert

it to their own use and gain, knowing that said property had been and would be so stolen, purloined and converted;

That these defendants aided, assisted, and protected each other in the commission of the aforesaid acts, and facilitated the commission of such acts;

That the said defendants, having conspired, combined, and confederated, and agreed together and with each other and with persons unknown as aforesaid, and in pursuance of such conspiracy and during its continuance, and to effect the objects thereof, committed the following overt acts, within the Macon Division of the Middle District of Georgia, at the times hereinafter set forth, to wit:

1.

On or about November 15, 1954, within the Macon Division of the Middle District of Georgia, Andrew Jackson Wright transported approximately 200 American-Bosch breaker point springs from the open-air storage lot, known as Lot No. 15, Robins Air Force Base, Georgia, to the apartment of said Andrew Jackson Wright, which was located at 371-C North Zeigler Apartments, Warner Robins, Georgia.

2.

On or about November 18, 1954, within the Macon Division of the Middle District of Georgia, Andrew Jackson Wright transported from the North Zeigler Apartments, Warner Robins, Georgia, to the room of Joseph Tomley, which was located at the Central

Hotel, Macon, Georgia, 200 American-Bosch breaker point springs, having platinum points.

3.

On or about December 1, 1954, within the Macon Division of the Middle District of Georgia, Joseph Tomley caused to be shipped and shipped 100 American-Bosch breaker point springs, having platinum points, to Harper Aircraft Supply, Dallas, Texas, from Macon, Georgia, by air mail, special delivery.

4.

On or about December 2, 1954, within the Macon Division of the Middle District of Georgia, Andrew Jackson Wright removed from the open-air storage lot, known as Lot No. 15, Robins Air Force Base, Georgia, approximately 225 Scintilla breaker assemblies, having platinum points, and Andrew Jackson Wright transported said property to the North Zeigler Apartments, Warner Robins, Georgia.

5.

On or about December 10, 1954, within the Macon Division of the Middle District of Georgia, Andrew Jackson Wright delivered to Joseph Tomley, at the Central Hotel, Macon, Georgia, approximately 225 Scintilla breaker assemblies, having platinum points.

6.

On or about December 20, 1954, within the Macon Division of the Middle District of Georgia, Joseph

Tomley caused to be shipped and shipped 754 American-Bosch breaker point springs from Macon, Georgia, to Consolidated Aircraft Supply Company, 1784 East Avenue, Rochester, New York, by Eastern Airlines.

7.

On or about December 20, 1954, within the Macon Division of the Middle District of Georgia, Joseph Tomley caused to be shipped and shipped to Consolidated Aircraft Supply Company, 1784 East Avenue, Rochester, New York, an unknown quantity of aircraft spark plugs, having platinum points, by Eastern Airlines.

8.

On or about January 20, 1955, within the Macon Division of the Middle District of Georgia, Joseph Tomley caused to be shipped and shipped to Consolidated Aircraft Supply Company, 1784 East Avenue, Rochester, New York, 2,000 Scintilla breaker assemblies having platinum points, from Macon, Georgia, by Eastern Airlines.

9.

On or about January 27, 1955, within the Macon Division of the Middle District of Georgia, Joseph Tomley caused to be shipped and shipped 150 pounds of aircraft spark plugs having platinum points to Consolidated Aircraft Supply Company, 1784 East Avenue, Rochester, New York, from Macon, Georgia, by Roadway Express, Incorporated.

10

On or about February 16, 1955, within the Macon Division of the Middle District of Georgia, Joseph Tomley caused to be shipped and shipped to Consolidated Aircraft Supply Company, 1784 East Avenue, Rochester, New York, 150 pounds of aircraft spark plugs, having platinum points, from Macon, Georgia, by Roadway Express, Incorporated.

11.

On or about February 25, 1955, in the Macon Division of the Middle District of Georgia, Joseph Tomley caused to be shipped and shipped to Consolidated Aircraft Supply Company, 1784 East Avenue, Rochester, New York, 200 pounds of aircraft spark plugs, having platinum points, from Macon, Georgia, by Roadway Express, Incorporated.

12.

On or about March 24, 1955, within the Macon Division of the Middle District of Georgia, Joseph Tomley caused to be shipped and shipped from Macon, Georgia, by Roadway Express, Incorporated, to H. Z. Rosenberg and Company, 701 Senaca Street, Buffalo, New York, 36 motor gun chargers, sometimes described as motor timer guns.

13.

On or about April 5, 1955, within the Macon Division of the Middle District of Georgia, Andrew Jackson Wright transported 15 motor gun chargers,

sometimes described as motor timer guns, from open-air storage lot, known as Lot No. 15, Robins Air Force Base, Georgia, to the North Zeigler Apartments, Warner Robins, Georgia.

Count II.

On or about November 18, 1954, within the Macon Division of the Middle District of Georgia, Joseph Tomley did unlawfully, wilfully, knowingly, and feloniously receive, conceal and retain, with intent to convert to his own use and to defraud the United States, 200 American-Bosch breaker point springs, having platinum points, the property of the United States, having a value of at least $350.00, with knowledge that said described property had theretofore been stolen and purloined.

Count III.

On or about December 10, 1954, within the Macon Division of the Middle District of Georgia, Joseph Tomley did unlawfully, wilfully, knowingly, and feloniously receive, conceal, and retain, with intent to convert to his own use and to defraud the United States, 225 Scintilla breaker assemblies, having platinum points, the property of the United States, having a value of at least $146.00, with knowledge that said described property had theretofore been stolen and purloined.

Count IV.

On or about March 24, 1955, within the Macon Division of the Middle District of Georgia, Joseph Tom-

ley did, without authority, and with intent to defraud the United States, sell, convey, and dispose of 15 motor gun chargers, sometimes described as motor timer guns, the property of the United States, to H. Z. Rosenberg and Company, 701 Seneca Street, Buffalo, New York, having a value of at least $292.50.

Count V.

On or about December 20, 1954, within the Macon Division of the Middle District of Georgia, Joseph Tomley did, without authority and with intent to defraud the United States, sell, convey, and dispose of, 754 American-Bosch breaker point springs, having platinum points, the property of the United States, to Consolidated Aircraft Supply Company, 1784 East Avenue, Rochester, New York, having a value of at least $1,319.15.

Count VI.

On or about January 20, 1955, within the Macon Division of the Middle District of Georgia, Joseph Tomley did, without authority and with intent to defraud the United States, sell, convey, and dispose of, 2,000 Scintilla breaker assemblies, having platinum points, the property of the United States, to Consolidated Aircraft Supply Company, 1784 East Avenue, Rochester, New York, having a value of at least $1,520.00.

Count VII.

On or about December 21, 1954, within the Macon Division of the Middle District of Georgia, Joseph

Tomley did, without authority and with intent to defraud the United States, sell, convey, and dispose of, 100 American-Bosch breaker point springs, having platinum points, the property of the United States, to Harper Aircraft Supply, Dallas, Texas, having a value of at least $175.00.

Count VIII.

On or about November 15, 1954, within the Macon Division of the Middle District of Georgia, Andrew Jackson Wright, with intent to defraud the United States, did unlawfully, wilfully, knowingly, and feloniously steal, purloin, and knowingly convert to his own use, 200 American-Bosch breaker point springs, having platinum points, the property of the United States, having a value of at least $350.00.

Count IX.

On or about May 9, 1955, within the Macon Division of the Middle District of Georgia, Andrew Jackson Wright, with intent to defraud the United States, did, unlawfully, wilfully, knowingly, and feloniously steal, purloin, and knowingly convert to his own use, 24 motor gun chargers, sometimes described as motor timer guns, the property of the United States, having a value of at least $468.00.

A True Bill.

(S.) CECIL F. HALL,
Foreman of the Grand Jury.

(S.) FLOYD M. BUFORD,
Assistant United States Attorney.

Filed Feb. 16, 1956.

No. 7262. United States District Court, Middle District of Georgia, Macon Division. The United States of America vs. Joseph Tomley, Andrew Jackson Wright. Indictment, Vio.: 18 USC 371 in con. with 18 USC 641; and 18 USC 641.

A true bill, (S.) Cecil F. Hall, Foreman. Filed in open Court this 16th day of February, A. D. 1956. (S.) Betty M. Jones, Deputy Clerk. Bail, $.....

PLEA.

I, Joseph Tomley having been advised of my Constitutional rights, and having had the charges herein stated to me, plead Not Guilty In Open Court, this 16th day of April, 1956.

(S.) L. EUGENE JESSUP,
Atty. for Joseph Tomley.

PLEA.

I, Andrew Jackson Wright having been advised of my Constitutional rights, and having had the charges herein stated to me, plead Guilty. In Open Court, this 16th day of April, 1956.

ANDREW J. WRIGHT,
(S.) DENMARK GROOVER, JR.,
Atty. for Andrew Jackson Wright.

VERDICT.

We, the jury find the defendant Joseph Tomley guilty of count #1, this 11th day of May, 1956, not guilty on counts 2, 3, 4, 5, 6, 7.

(S.) MACK D. GRAY,
Foreman.

MOTION FOR BILL OF PARTICULARS.

(Title Omitted.)

Now comes Joseph Tomley, one of the defendants in the above-captioned matter, and within ten days of his arraignment files this his motion for a bill of particulars, as follows:

1.

That there be filed and furnished a bill of particulars showing and disclosing:

(a) As to Count 1:

The manufacturer's model number and serial number and the Air Force stock number of the scintilla breaker assemblies and the American-Bosch breaker point springs; the manufacturer's name, model number and serial number and the Air Force stock number of the motor gun chargers and the aircraft spark plugs.

(b) As to Count 2:

The manufacturer's model number and serial number and the Air Force stock number of the American-Bosch breaker point springs, and from whom it is contended this defendant received such breaker point springs as set forth in said count.

(c) As to Count 3:

The manufacturer's model number and serial number and the Air Force stock number of the scintilla breaker assemblies, and from whom it is contended this defendant received such scintilla breaker assemblies as set forth in said count.

(d) As to Count 4:

The Manufacturer's name, the manufacturer's model number and serial number and the Air Force stock number of the motor gun chargers.

(e) As to Count 5:

The manufacturer's model number and serial number and the Air Force stock number of the American-Bosch breaker point springs.

(f) As to Count 6:

The manufacturer's model number and serial number and the Air Force stock number of the scintilla breaker assemblies.

(g) As to Count 7:

The manufacturer's model number and serial number and the Air Force stock number of the American-Bosch breaker point springs.

2.

This defendant shows that all of the items and merchandise above enumerated do have a manufacturer's model number and/or serial number and do have an Air Force stock number, but without information of the same this defendant is not definitely and properly apprised of the merchandise that he is alleged to have been unlawfully concerned with; that there are different types and models, of scintilla breaker assemblies of the kind involved in the indictment, and different types and models of American-Bosch breaker point springs of the kind involved, with different model numbers and/or serial numbers and Air Force stock numbers; that there are several manufacturers who make motor gun chargers of the kind involved, and different motor gun chargers, whether made by the same manufacturer or different manufacturers, have different model and/or serial numbers and have different Air Force stock numbers; that there are different manufacturers of aircraft spark plugs of the type involved in the indictment, and there are different model and/or serial numbers of such spark plugs, even among the same manufacturer.

3.

This defendant shows that to properly prepare his defense to this case he must be, and he is entitled to be, fully and definitely apprised and informed of

the definite material and items he is charged with handling in the indictment, for otherwise he might prepare his defense to one type of the merchandise involved, or with respect to one manufacturer's type of the merchandise involved, and be confronted at the trial with having been involved with different merchandise; and, therefore, he would be surprised and unprepared in his defense and would be deprived of a fair and impartial trial.

4.

This defendant further shows that the description of the merchandise and items involved, lacking in the particulars above set forth and requested herein, does not inform this defendant of the true type, nature and kind of merchandise involved in the indictment.

Wherefore, this defendant prays that this his motion for a bill of particulars be granted by the Court, and that the same be made a matter of record in this case.

L. EUGENE JESSUP,
WALLACE MILLER, JR.,
Attorneys for Defendant
Joseph Tomley.

Filed Apr. 20, 1956.

RESPONSE TO MOTION FOR BILL OF PARTICULARS.

(Title Omitted.)

Come now Frank O. Evans, United States Attorney and Floyd M. Buford, Assistant United States Attorney, and in response to the Motion for Bill of Particulars previously filed by the defendant Joseph Tomley, and say:

1.

In responding to paragraph 1 of the Motion for Bill of Particulars, the Government says that the following manufacturers model numbers and Air Force stock numbers are among manufacturers model and Air Force stock numbers of the property described in Count I of the indictment, but by no means should this listing be construed as a listing of all manufacturers model or Air Force stock numbers of the property described in Count I of the indictment:

a. Scintilla breaker assemblies, having a breaker contact point, Manufacturer's Model #10-20236, Air Force Stock No. 4704-10-20236.

b. American-Bosch breaker point springs, Manufacturer's Model #SP 5287, Air Force Stock No. 4701-SP 5287.

c. Motor gun chargers, Manufacturer's model #5069625, Air Force stock No. 5910-5069625.

d. Aircraft spark plugs—no specific numbers available.

2.

In response to paragraph 1 (b) of the Motion for Bill of Particulars, the Government says that the American-Bosch breaker point springs, described in Count II of the indictment, has Manufacturer's Model No. SP 5287 and Air Force Stock No. 4701-SP 5287, and the Government further says that the defendant, Joseph Tomley, received said property from the defendant, Andrew Jackson Wright.

3.

In response to paragraph 1 (c) of the Motion for Bill of Particulars, the Government says that the Scintilla breaker assemblies having a breaker contact point described in Count III of the indictment, have a manufacturers model number, to wit: 10-20236 and an Air Force stock number, to wit: 4704-10-20236, and that the Government further says that the defendant, Joseph Tomley received said property from the defendant, Andrew Jackson Wright.

4.

In response to paragraph 1 (d) of the Motion for Bill of Particulars, the Government says that the motor gun chargers described in Count IV of the indictment have manufacturer's model No. 5069625 and Air Force stock number 5910-5069625.

5.

In response to paragraph 1 (e) of the Motion for Bill of Particulars, the Government says that the

American-Bosch breaker point springs described in Count V of the indictment have manufacturer's model number SP 5287 and Air Force stock number 4701-SP 5287.

6.

In response to paragraph 1 (f) of the Motion for Bill of Particulars, the Government says that the Scintilla breaker assemblies having a breaker contact point, which are described in Count VI of the indictment,—that 1,000 of said property have a manufacturer's model number, to wit: 10-20236 and an Air Force stock number, to wit: 4704-10-20236; and that the other 1,000 of said property have a manufacturer's model number of 10-20237 and an Air Force stock number, to wit: 4704-10-20237.

7.

In response to paragraph 1 (g) of the Motion for Bill of Particulars, the Government says that the American-Bosch Breaker point springs, described in Count VII of the indictment have manufacturer's model number SP 5287 and Air Force stock number 4701-SP 5287.

Wherefore, the United States of America having fully responded to the Motion for Bill of Particulars described herein, prays that its response be made a matter of record.

FRANK O. EVANS,
United States Attorney,
By (S.) FLOYD M. BUFORD,
(Floyd M. Buford),
Assistant United States
Attorney.

Certificate of Service.

Georgia,
Bibb County.

I, Floyd M. Buford, Assistant United States Attorney, certify that I have this day served a copy of the foregoing response to Motion for Bill of Particulars on the Honorable Wallace Miller, Jr., counsel of record for defendant Joseph Tomley, by handing a copy of the same to him in person.

This 4th day of May, 1956.

(S.) FLOYD M. BUFORD,
(Floyd M. Buford),
Assistant United States
Attorney.

FMB/hal

Filed May 4, 1956.

ANDREW JACKSON WRIGHT, being called as a witness by the Government, testified as follows:

Direct Examination.

By Mr. Buford:

Q. You are Mr. Andrew Jackson Wright?

A. Yes, sir.

Q. Mr. Wright, now see these ladies and gentlemen back here on the end of the jury here? They've got to hear everything you say, so when you answer my questions try to speak distinctly where everybody can hear you. Your name is Andrew Jackson Wright?

A. Yes, sir.

Q. I didn't hear you, sir.

A. Yes, sir.

Q. That's better. We can hear you now. I believe you were named in this indictment along with Mr. Tomley?

A. Yes, sir.

Q. You have told me that you would like to testify in this case for the Government?

A. Yes, sir.

Q. Mr. Wright, where do you live now?

A. C-7, Felton Homes, sir.

Q. Where are you working now?

A. Maxwell Brothers Box Factory, Poplar Street.

Q. Here in Macon?

A. Yes, sir.

Q. Back in 1954 where were you working?

A. Warner Robins Air Base.

Q. What was your position out at the Base?

A. I was a warehouseman.

Q. Could you tell us briefly what the duties of a warehouseman were, in order that the jury will know what your job was out there?

A. To receive and store materiel and ship materiel.

Q. Dealing with air craft property mostly?

A. Yes, sir.

Q. Do they keep a lot of air craft property stored at Warner Robins Air Base?

A. Yes, sir.

Q. I believe they refer to that as Robins Air Base, don't they?

A. Yes, sir.

Q. I'll ask you if around November 1, 1954 you had the occasion to meet Mr. Joseph Tomley?

A. Yes, sir.

Q. All right, sir, will you tell me how it came about that you met Mr. Tomley, where you were and under what circumstances.

A. Well, I met Mr. Tomley down here in town at the Central Hotel.

Q. Did you go down to the Central Hotel?

A. Yes, sir.

Q. What was the nature of your business here at the Central Hotel in Macon, Georgia?

A. Well, I had met Mr. Clot out on the base and he showed me some breakers and asked me if I could get hold of some of them for him, and I did.

Q. Well let me stop you there. Who is Mr. Clot?

A. He's a fellow that bought materiel off the base, salvage, disposal stuff off the base.

Q. You know his first name?

A. No, sir.

Q. But you do know his name was Clot?

A. Yes, sir.

Q. And he asked you to get some what? What kind of part was it?

A. Breaker springs, and er—

Q. Breaker springs?

A. Yes, sir.

Q. Did he show you one of them?

A. Yes, sir.

Q. What did Mr. Clot tell you to do with it, in connection with Mr. Wright?

A. Well, he told me if I would bring it to the Central Hotel he would buy it from me.

Q. Bring it to the Central Hotel, or some of them?

A. Bring some of them, some like it.

Q. Well, did you?

A. Yes, sir.

Q. Did you get some of them?
A. Yes, sir.
Q. Did he know you to be a Warner Robins employee?
A. Yes, sir.
Q. He had seen you out there?
A. Yes, sir.
Q. He knew you?
A. Yes, sir.
Q. Well, I'll ask you if you got any of them?
A. Yes, sir.
Q. Springs and points?
A. Yes, sir.
Q. I want to show you this and ask you if you have ever seen anything like this before?
A. Yes, sir.
Q. What do you call that?
A. I call that a point.
Q. A point?
A. Yes, sir.
Q. Does that have a—will you take it and look at it please, sir.
A. Yes, sir.
Q. What kind of metal is that point made out of?
A. Plat—

* * * * * * * *

Q. You say that's what you call a point?
A. Yes, sir.
Q. Was that the type of point that Mr. Clot was asking you to get?
A. Not at that time. It was a different one at that time.

Q. Well, let me see if I have got one like it. I'll show you some other items here and ask you if any of these items is the kind that Mr. Clot was asking you for? Maybe we don't have them. Have you ever seen these items before?

A. Yes, sir.

Q. Any of those the kind that Mr. Clot was asking you to get?

A. No, that's not exactly the kind.

Q. But they were—

* * * * * * * *

Q. I'll ask you if you have ever seen this?

A. Yes, sir.

Q. I'll ask you if that was the type of property that Mr. Clot was asking you to get?

A. That's the type.

Q. This is the type?

A. Yes, sir.

Mr. Buford:

I would like to get this identified as Government Exhibit No. 1.

Mr. Miller:

I presume the Government is going to connect all of this up. All of it would be hearsay of course as to this defendant. If not we are objecting to all of this testimony concerning a conversation between this witness and Mr. Clot.

By the Court:

What do you say to that, Mr. Buford?

Mr. Buford:

We will connect it up, and of course I want to remind Your Honor at this time that Count One says Mr. Wright and Mr. Tomley conspired with each other and with divers other persons to the Grand Jurors unknown.

Q. Now I want to show you Government Exhibit No. 1, dated May 7, 1956, and ask you if this is the point part that you were talking about that Mr. Clot asked you to get some of them for him?

A. Yes, sir.

Q. Is that it?

A. (Nodded his head.)

Q. Now did you get some of those Government Exhibits No. 1, that you call a point, for Mr. Clot?

A. Yes, sir.

Q. Did you steal them?

A. Yes, sir.

Q. At Warner Robins, or Robins Air Force Base?

A. Yes, sir.

Q. Government property?

A. Yes, sir.

Q. You know how many it was? Could you approximate it?

A. No, sir, I don't know just how many it was.

Q. Well, what did you do after you left, took 'em off the place? Go ahead and tell us just what took place.

A. Well, I took them home. I taken a few out in three or four days and taken them up to the hotel.

Q. Where were you living?

A. North Zeigler Apartments.

Q. At Warner Robins?

A. Yes, sir.

Q. You carried them home and then you carried them to the Central Hotel?

A. Yes, sir.

Q. Did you see Mr. Clot when you got to the Central Hotel in Macon?

A. Not when I first got there. I was suppose to meet him out in front and he come down a little later and pointed out Mr. Tomley to me and told me to take them to him.

Q. I didn't quite understand that. You did what after you got there?

A. I walked around the hotel and Mr. Clot come out after a little bit and pointed Mr. Tomley out to me and told me to take them over to Mr. Tomley.

Q. When you say he pointed Mr. Tomley out, are you talking about this man here? Is this the man he pointed out to you?

A. Yes, sir.

Q. Mr. Clot told you to take them to Mr. Tomley?

A. Yes, sir.

Q. Did you know Mr. Tomley at that time?

A. I had seen him but I didn't know him, didn't know his name.

Q. You hadn't carried on any negotiations with him at that time?

A. No, sir.

Q. Well, did you go over to Mr. Tomley at that time?

A. Yes, sir.

Q. Tell us everything that took place as best you can recall.

A. Well, he had a little truck parked across the street there and we walked over to the truck and I had those things in the bag and he taken them and counted them and paid me for them.

Q. You had them in a bag?
A. Yes, sir.
Q. And he counted them?
A. Yes, sir.
Q. And when you say "he" are you speaking of Mr. Tomley?
A. Mr. Tomley.
Q. And he paid you for them?
A. Yes, sir.
Q. You delivered them to him?
A. Yes, sir.
Q. Now that's that item that you have just described here as being Government Exhibit No. 1?
A. Yes, sir.
Q. You delivered those to Mr. Tomley here in Macon?
A. Yes, sir.
Q. And you say that was sometime in November of 1954?
A. Yes, sir.

* * * * * * * *

Q. Do you recall how much money, Mr. Wright, that Mr. Tomley paid for these parts that you have described as Government Exhibit No. 1 that you stole from Robins Air Force Base?
A. Paid $80.00,
Q. $80.00. Now how was that, in cash or check or how were you paid?
A. In cash.
Q. You said something about an Acme truck there, or what was that you said?
A. He had Acme Tool Company on the side of the truck.

Q. Was the truck parked there in the street?

A. Across the street there from the hotel, kind of back of the hotel.

Q. And you went out to the truck?

A. Yes, sir.

Q. Mr. Tomley go with you?

A. Yes, sir.

Q. And the truck was parked there at the back of the hotel?

A. Yes, sir.

Q. That the Central Hotel here in Macon?

A. Yes, sir.

Q. Now did you have any discussion with Mr. Tomley there back of the hotel, at the truck when he paid you the $80.00 for this property, about any other property?

A. Well, he wanted to know if I could get some more of those and give me a number or two, if I could get some of that stuff he would be glad to have it.

Q. Wanted to know if you could get some more of Govt. Ex. 1 here that you have just described and then gave you some additional numbers?

A. Yes, sir.

Q. When you say numbers you mean the number of the particular—

A. The stock number of the material?

Q. The stock number?

A. Yes, sir.

Q. What did you tell him?

A. Well, I taken the numbers.

Q. Did you tell him you would try to get some?

A. Yes, sir.

Q. Some more property of that description?

A. Yes, sir.

Q. Was anything said about the platinum property in that conversation?

A. He said all that stuff is supposed to have platinum on it, those breaker springs.

Q. Who said that?

A. I say that's what it's suppose to have on it I understood. That's what he said, that all of it had platinum on it.

Q. Mr. Tomley said all supposed to have platinum on it?

A. All those points and springs.

Q. Well, was that the kind he was asking you to get?

A. Yes, sir.

Q. Then what took place, Mr. Wright?

A. Well, it rocked on, a little later on I found some of those little scintilla breaker assemblies.

Q. Scintilla breaker assemblies?

A. Yes, sir.

Q. You got some of those?

A. Yes, sir.

Q. What did you do with them?

A. I taken 'em to Mr. Tomley at the hotel.

Q. You have any idea how many you got on this occasion that you are speaking of?

A. No, sir, I don't. I don't remember just how many there was.

Q. But you carried them to Mr. Tomley at the hotel here in Macon?

A. Yes, sir.

Q. How would you get them off the base, Mr. Wright?

A. I would put them in my pocket.

Q. You would get them all at one time and then carry them to—

A. No, sir, I would get them two or three days maybe.

Q. Take some with you every afternoon when you got off from work?

A. That's right.

Q. What time did you get off from work out there?

A. Four forty-five.

Q. And you would carry some in your pocket?

A. Yes, sir.

Q. What would you do with them as you left the base?

A. I would take them home with me and keep them a couple of days, three days, and then I would call him up and ask him about bringing them to him.

Q. Why would you wait for two or three days before you would call him up?

A. Well, I would have maybe a hundred or two and I could take them up to him.

Q. A hundred or two, and you were waiting to get enough to carry to the Central Hotel?

A. Yes, sir.

Q. Now these scintilla breaker assemblies that you have just told us about that you got, you told us that you met Mr. Tomley sometime in November, 1954. You know when you got these scintilla breaker assemblies that you have just told us about?

A. I don't remember just the dates sir, but later on.

Q. Was it before Christmas, 1954?

A. A little before Christmas, I reckon.

Q. Between November 1, 1954 and Christmas, 1954?

A. Yes, sir.

Q. And have you got any idea how many it was on this ocasion?

A. No, sir, I don't know just how many it was.

Q. You don't know whether it was fifty or a hundred or—

A. Oh, it was, I imagine, a couple of hundred or better, somewhere around that.

Q. Could it be as many as two fifty?

A. Yes, sir, could be.

Q. Could it be as little as two hundred?

A. Yes, sir.

Q. Well, what range would you say?

A. I would say between two hundred and three hundred.

Q. Between two and three hundred scintilla breaker assemblies?

A. Yes, sir.

Q. And you carried those to Mr. Tomley between November 1 and Christmas of 1954 here at the Central Hotel in Macon?

A. I would say somewheres along in there, yes, sir.

Q. Well now do you have any recollection as to how much money he paid you for them?

A. Not just exactly. I would say $75 or $80 maybe.

Q. Now Mr. Wright, after you carried these scintilla breaker assemblies there and before Christmas, 1954, to Mr. Tomley, what took place after that?

A. Well, later on I got that number of that American-Bosch breaker spring.

Q. He gave you a number on the American-Bosch breaker spring?

A. Yes, sir.

Q. When you say number, are you referring to the stock number?

A. Yes, sir.

Q. And what did he tell you to do when he gave you the American-Bosch breaker spring stock number?

A. Well, he said he would like to have some of those.

Q. Like to have some of them?

A. Yes, sir.

Q. Did he say he would buy some from you?

A. Yes, sir.

Q. What did you do?

A. Well, I found some of them and I taken some of them.

Q. Tell us how you got them off the base?

A. I got them out in my pockets.

Q. Sir?

A. Put them in my pocket and taken them out.

Q. Now of course all the questions I am asking you, Mr. Wright, are about the period November 1, 1954 through May, 1955. Now these American-Bosch breaker springs that you got off of Robins Air Force Base at the request of Mr. Tomley, did you carry them to him?

A. Yes, sir.

Q. Do you have any idea how many it was?

A. I imagine it was about 300 of those.

Q. About 300 of those? That's your estimate?

A. Yes, sir.

Q. How much did he pay you for those? Did he pay you any money?

A. Yes, sir.

Q. How much did he pay you for American-Bosch breaker springs?

A. Well, I just don't remember exactly.

Q. Was it twenty five, fifty, seventy five or a hundred? You got any idea?

A. It was $75 or $80 I imagine, somewhere along there.

Q. Did you have them in your pocket or a paper bag?

A. I had them in a paper bag.

Q. Now I'll ask you, Mr. Wright, if you have ever had any dealings with Mr. Tomley concerning any motor gun chargers, sometimes referred to as motor timer guns?

A. Yes, sir, I let him have 15 of those motor gun timers, I believe it was.

Q. You call them motor gun timers?

A. Yes, sir.

Q. Sometimes referred to as motor gun chargers?

A. Chargers, yes, sir.

Q. Well, where did you get those 15?

A. I got them off the Base, sir.

Q. Warner Robins Air Force Base?

A. Yes, sir.

Q. Did you carry them to your home first?

A. Yes, sir.

Q. And then you brought them where?

A. To the hotel.

Q. Central Hotel, Macon?

A. Yes, sir.

Q. That's where Mr. Tomley was living, there at the Central Hotel in Macon?

A. Yes, sir.

Q. Well, did Mr. Tomley ask you to get those motor gun chargers, or did you just bring them down there on your own?

A. He said he would like to have some of them.

Q. So you carried him 15?

A. Yes, sir.

Q. Was that after Christmas, 1954?

A. Yes, sir.

Q. You don't remember the exact date?

A. No, sir.

Q. Well, would you say it was between Christmas, 1954 and May, 1955 or somewhere along in there?

A. Yes, sir.

Q. How much did Mr. Tomley pay you for the motor gun chargers?

A. $15.00 I believe.

Q. Paid you a dollar a piece for them?

A. Yes, sir.

Q. Now you have mentioned carrying Mr. Tomley Scintilla breaker assemblies, American-Bosch breaker springs and motor gun chargers, sometimes referred to as motor gun timers. I'll ask you if you ever had a conversation with him concerning any kind of spark plugs?

A. He asked me about spark plugs, but I never bothered any spark plugs.

Q. What kind did he ask for?

A. Ones wih platinum points.

Q. Well, was that automobile spark plugs or air craft?

A. Air craft.

Q. What did he tell you about that?

A. Well, he said if I could get some of that material, those plugs, and put them on the lot where he bought over on the salvage yard, he could get them from there.

Q. Said you could put them on the salvage yard?

A. Yes, sir, on the lots that he bought on.

Q. Wanted ones with platinum points on them?

A. Yes, sir.

Q. And you say you never did get any of those?

A. No, sir.

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Q. Why didn't you get any of those spark plugs?
A. Well, sir, I just didn't have any way. I mean I just never did try to get any of them.
Q. Were you on the look out for some though?
A. No, sir. There was plenty of them out there if I had wanted to take them off there.
Q. Well, Mr. Wright, Mr. Tomley had asked you to get some?
A. Mr. Tomley had asked me about getting some.
Q. But you never did get any?
A. No, sir.
Q. Now Mr. Wright, I am going to show you what has been identified as Govt. Ex. No. 2, which is a card that has on the front: "You have head of Robert E. Lee. This is Tomley. 25706 Joe Tomley Sells Most Anything Buys Central Hotel, Macon, Ga." Have you ever seen that before?
A. Yes, sir.
Q. Did you have that in your possession when you were arrested by the FBI?
A. Yes, sir.
Q. By Mr. Powell?
A. Yes, sir.
Q. Did you turn that over to Mr. Powell when you were arrested?
A. Yes, sir.

Mr. Miller:
Did he say where he got it from?

Q. Where did you get it from Mr. Wright?
A. Got it from Mr. Tomley.
Q. Mr. Joseph Tomley?
A. Yes, sir.
Q. That's the gentleman sitting there next to Mr. Miller?

A. Yes, sir.

Q. Who wrote that number on there, 25706?

A. Mr. Tomley wrote it on there.

Q. Is that Mr. Tomley's handwriting?

A. Yes, sir.

Q. What is that supposed to be?

A. Telephone number of the Central Hotel.

Q. He gave you that card?

A. Yes, sir.

Q. Well, did he give it to you between the period November 1, 1954 and May 10, 1955?

A. Yes, sir.

Q. What did he give it to you for, Mr. Wright?

A. Well, where I could call him.

Q. Call him?

A. When I got the materiel for him.

Q. Now I'm going to show you Govt. Ex. No. 3, which is a little sticker here, has "Approved Aircraft Parts, quantity 1000, call 49-11" under a little column here "Inspection", and it has some other numbers on it, and then at the bottom it has "Durham Aircraft Service, Woodside, N. Y. RA. 6-3000." I show you this Government Exhibit No. 3 here and ask you if you have ever seen that before?

A. Yes, sir.

Q. What is that Mr. Wright?

A. That's the stock number of that contract.

Q. Stock number on property that Mr.—

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Q. I'll ask you if you ever had this in your possession?

A. Yes, sir.

Q. I'll ask you if you turned it over to Mr. Powell when you were arrested?

A. Yes, sir.

Q. Where did you get it from?

A. I got that off of a box myself. Mr. Tomley gave me this number down here to look for and I found that on the box and I taken that.

Q. You got it off of the box?

A. It was in a box. It wasn't on the box. It was in a box.

Q. And this number written in here, who gave you that number?

A. Mr. Tomley had wrote it down previously and gave it to me and asked me to look for that.

Q. That was one of the numbers he had asked you for?

A. Yes, sir.

Q. And you were carrying this around in your pocket?

A. That's right, yes, sir.

Q. I'll ask you now, this little tag that I just showed you, Govt. Ex. No. 3, did Mr. Tomley give you that stock number during the period November 1, 1954 up to May 10, 1955, during that period?

A. Yes, sir.

Q. He hasn't given it to you since that date?

A. No, sir.

Q. Mr. Wright, I'll ask you if you ever had a conversation here on the street somewhere about some motor gun chargers?

A. Yes, sir, down in front of the Greyhound bus station one night. He had a little motor gun charger and showed it to me and talked about it.

Q. You said "he". Who do you mean?

A. Mr. Tomley said he would like to have some of those.

Q. You saw Mr. Tomley down at the Greyhound Bus Station here in Macon and he showed you a motor gun charger?

A. Yes, sir.

Q. One of these little motors?

A. Yes, sir.

Q. What did he tell you?

A. He would like to have some of those if I could get hold of them.

Q. And I believe you have already told us about 15 of them that you got?

A. Yes, sir.

Q. And you turned those over to Mr. Tomley?

A. Yes, sir.

Q. Now I'll ask you if you have a lawyer in this case?

A. Well, Mr.—er—Groover, I talked to Mr. Groover.

Q. Did you hire Mr. Groover? Is he your lawyer?

A. No, sir, I didn't hire him.

Q. Well, why did you go to Mr. Groover if you didn't hire him as your lawyer?

A. Well, Mr. Jessup asked me to see—told me I ought to get a lawyer, and told me if I would go see Mr. Groover I might get him.

Q. Now that's Mr. Jessup sitting next to Mr. Tomley?

A. Yes, sir.

Q. Mr. Jessup came out to see you?

A. Yes, sir.

Q. Did he tell you that he was representing Mr. Tomley?

A. Yes, sir.

Q. And what did he tell you about getting a lawyer?

A. He just told me I should have a lawyer, and I believe he mentioned Mr. Jacobs and Mr. Groover.

Q. Well, did you go to see Mr. Groover?

A. Yes, sir.

Q. Was that the only time that Mr. Jessup mentioned to you about going to see Mr. Groover?

A. That's the only time he mentioned about going to see Mr. Groover.

Q. Mr. Groover came over here and has been representing you in this case? He was here when you—

A. Yes, sir.

Q. In April 16, here in Court in your behalf?

A. Yes, sir.

Q. I'll ask you if you ever paid Mr. Groover anything for his services?

A. No, sir.

Q. I'll ask you if you ever agreed to pay him anything?

A. No, sir. I told him I couldn't pay him anything

Q. Told him you couldn't pay anything?

A. Yes, sir.

Q. I'll ask you from your own knowledge do you know who is paying him?

A. No, sir, I don't know who's paying him.

Q. You know you haven't paid him anything?

A. I know I haven't paid him.

Cross Examination.

By Mr. Miller:

Q. Now, Mr. Wright, you knew and know now and have known for quite some time that Mr. Tomley here is a dealer in war surplus?

A. Yes, sir.

Q. And when I say war surplus I also mean military surplus like they sell from Warner Robins.

A. Yes, sir.

Q. And you have known for quite some time that Mr. Tomley bought at the surplus sales out at Warner Robins, bought various air craft surplus material?

A. Yes, sir.

Q. Now, Mr. Tomley is not the only war surplus dealer that bought out there is he?

A. I don't think so.

Q. Well, do you know any others?

A. I don't know any others, no, sir.

Q. You don't know of any other man besides—

A. I don't know anybody by name besides Mr. Tomley and I know Mr. Clot when I see him out there.

Q. Was Clot a war surplus buyer or a military surplus buyer?

A. I think so.

Q. You ever see him on the field in the surplus department?

A. Yes, sir.

Q. Well, now let's describe a little bit right there for the benefit of the jury just what this surplus department looks like down there. Besides having a building down there, it's got a big open area where they stack the stuff, maybe two boxes or six or eight high?

A. That's right.

Q. And it covers several acres around there?

A. That's right.

Q. And part of your job, I believe, Mr. Wright, down there at Warner Robins was to pull or haul, pull with a little dolly, little tractor with a sort of a wagon behind it, pull material over from what is

called Class 27 or Reclamation over to Salvage. You did that at times?

A. That's right.

Q. And when you got over to Salvage with it—when I say salvage I mean this area we are talking about of several acres—did you stack it in a certain place?

A. No, sir. I would pull it in there on the trailers and leave it, turn the paper work over to the man that received it over there and I would leave it there.

Q. And ride back on your dolly without your wagon behind you?

A. Yes, sir.

Q. Go get another wagon load?

A. Yes, sir.

Q. And there were times down there of course that the whole area down there was covered with this salvage that you and other people had brought over there for sale?

A. Yes, sir, that's right.

Q. Well now did you know a surplus dealer by the name of A. W. Tharpe?

A. No, sir.

Q. Did you know one by the name of Herndon?

A. No, sir.

Q. You never heard of him?

A. No, sir.

Q. Never heard of Tharpe?

A. No, sir.

Q. You ever hear of one by the name of Bilderback?

A. I have heard of him, but I—

Q. You ever see him out there buying?

A. I've saw him down there.

Q. At Salvage?

A. Yes, sir.

Q. You ever heard of one by the name of John E. Thomas?

A. No, sir.

Q. Ever heard of one by the name of M. D. Strickland?

A. No, sir.

Q. You ever heard of one by the name of George Briscoe from Gainesville, Georgia?

A. No, sir.

Q. You ever heard of one by the name of Lou Merlin?

A. No, sir.

Q. How long you been working at Warner Robins, Mr. Wright?

A. Worked from November of 1952 until May of 1955.

Q. And all during that period you were hauling surplus material over to—

A. Not all the time, no, sir.

Q. When did you start doing that?

A. Maybe I would haul a day or two a week and then maybe no more for a month or—that really wasn't my job. I just done that to help get the material moved when we couldn't get the transportation driver to move it.

Q. I understand sir, but you did start bringing merchandise over to surplus soon after you started to work down there in '52?

A. I—it was quite a while before I started.

Q. Would you say '52 or '53 or when?

A. It was later on in '53 or maybe the first part of '54 before I did that, maybe in '54 before I started driving. You had to have a license to drive one of those things and I don't remember just when I got mine.

Q. Had to have a special license in addition to the automobile license?

A. That's right, had to have a government license.

Q. Well now, Mr. Wright, I believe shortly before you were arrested on this case you were arrested down at Warner Robins one evening or one day while you were driving a car for driving under the influence of intoxicating liquors?

A. That's correct.

Q. And was that the first time you had been arrested for driving UI?

A. Yes, sir.

Q. You had not been arrested for driving under the influence over in La Verne, Alabama?

A. I had been arrested one time there.

Q. Over there at your former home before you came to Warner Robins?

A. Yes, sir.

Q. You ever been arrested for being drunk after that, driving under the influence or just drunk?

A. Not driving. I've been arrested for drinking.

Q. How many times?

A. Couple of times, I think.

Q. And I believe on this occasion when you were arrested for driving UI at Warner Robins the City Police did that arresting, the Warner Robins police?

A. Yes, sir.

Q. And when they arrested you they found in your possession some aircraft motors. I believe?

A. That's right.

Q. Four in number, or how many was it?

A. Four, yes.

Q. What did they do with the motors? Did they take them?

A. Yes, sir.

Q. And then you paid a fine for the driving under the influence charge and cleared that up with the City of Warner Robins?

A. That's right.

Q. Thereafter did you hear from the FBI or the Robins Field police?

A. Yes, sir.

Q. Now what do they call the police down at Warner Robins? don't mean the fellow that stands there and waves you in and out of the gate. I mean the investigating department on the base?

A. OSI.

Q. OSI? Now is Mr. Crutchfield a member of the OSI?

A. Yes, sir.

Q. The OSI is not in Military uniform?

A. No, sir.

Q. All right, did Mr. Crutchfield or somebody from the OSI contact you several days after you were arrested for driving UI?

A. They contacted me on Monday morning.

Q. Tell us what happened then. Did they come to your house or where?

A. I was at work and he just called me from work and asked me to come to his office.

Q. And you went?

A. Yes, sir.

Q. And who was there?

A. Mr. Cutrchfield.

Q. By himself?

A. Well, there was other people working in the building there. I went into his office.

Q. Was there anybody in the office besides you and Crutchfield?

A. Not at that time.

* * * * * * * * *

Q. Mr. Wright, I believe when we adjourned for lunch that we had gotten to where you were arrested for driving UI and you paid your fine, and I believe your testimony was that the City Police of Warner Robins took out of the automobile the night you were arrested for driving under the influence of intoxicating liquors four electric motors?

A. That's right.

Q. And later you were called by Mr. Crutchfield, a member of the OSI over to the OSI office on Robins Field Base?

A. Right.

Q. And you went into conference with Mr. Crutchfield in the office with nobody but him that particular day?

A. Well, later on Mr. Powell come in.

Q. All right sir. What was the time of day when you first went into the office with Mr. Crutchfield?

A. It was the morning part of the day, I imagine around 10 or 10:30, might have been a little earlier or later.

Q. And what part of the day did Mr. Powell, the FBI agent sitting here on the left of Mr. Evans, come into the conference?

A. He got out there before noon time I believe.

Q. And how long did that conference continue?

A. Well, over into the afternoon a while.

Q. Was that the only conference you had with Mr. Crutchfield or Mr. Powell concerning the matter?

A. We were together all that afternoon and a little while that night.

Q. All right sir, now what time did the meeting adjourn that night?

A. About 9 o'clock I suppose.

Q. The meeting started in the morning sometime and wound up that night about nine?

A. That's right.

Q. Well, now during the discussion there I believe there was only the three of you there, you and Mr. Powell and Mr. Crutchfield?

A. That's right.

Q. Anybody else there?

A. No.

Q. While you were there you were led to believe that Mr. Tomley had talked about this thing and had implicated you? That's what you were led to believe?

A. Well, I didn't believe—they said something about they had talked to Mr. Tomley.

Q. Well, I say they led you to believe that Tomley had talked about the thing and had brought you in on it and that Tomley was making a lot of money off of the thing and you were making a small amount?

A. Well, I don't say that I really believed that.

Q. I don't say you believed it. But I said they talked about that and told you that?

A. Not er—

Q. Sir?

A. I don't think they told me that.

Q. You don't recall anything like that?

A. No.

Q. But it took you all day there to wind up whatever your conference was?

A. Well, I went home—we went home and my baby was sick and they offered to take the baby to the doctor.

Q. Well—

A. They stayed up at the house a while up there, an few minutes, and we went back down—we et dinner, had dinner, and—

Q. Well, you had been up all of the night before, I believe, with a sick baby?

A. I art of the night.

Q. And is it your testimony that nothing was said at that conference about you getting a small amount of remuneration or money for the items and Tomley getting big money? Nothing like that was said to you?

A. I don't remember that.

Q. At that meeting, is that when you signed a statement or did you ever sign a statement?

A. I signed a statement that day, yes, sir.

Q. And what day of the week was that?

A. Monday.

Q. Were you arrested that day?

A. Yes, sir.

Q. Now I believe your testimony has been that this mechanical gadget or part here which I am now handing you and which has a tag on it marked Govt. Ex. 1, I believe your testimony is that that is the first of the merchandise that you say you took and turned over to Mr. Tomley?

A. That's right.

Q. Let me have it back please. Now that particular piece of merchandise, Govt. Ex. 1, what do you call it? What is it known to you as?

A. Well, I just know it as a breaker assembly.

Q. What kind?

A. I don't know what kind. It's just a breaker.

Q. Well, now is that the only type of breaker assembly you ever delivered to Mr. Tomley? In other words, all breaker assemblies you delivered to him were just like this Govt. Ex. 1?

A. No, there was different ones, scintillas, we had one of them there while ago.

Q. Who had one while ago?

A. Didn't you have one of them while ago?

Q. Oh, you mean some of the government men?

A. Yeah.

Q. I thought you meant I had one.

A. No.

Q. Well, now let me hand you another mechanical gadget or piece and ask you if that's what you are calling a scintilla breaker assembly?

A. That's what I let him have some of.

Q. Sir?

A. That's what I would call it.

Q. What you have in your hand now is what you would call a scintilla breaker assembly, and that's what you say you delivered to Mr. Tomley?

A. Delivered a few of those.

Q. And that is what you are calling a scintilla? That's what you are referring to?

A. That's right.

By the Court:

Do you wish to have the Clerk mark that for identification now so the record will show what it is?

Mr. Miller:

Yes, sir, and I'll ask the Clerk to mark it as Defendant's Exhibit No. 1, may it please the Court.

Q. And I believe your testimony was, on direct examination, or what was your testimony. I didn't get it if there was any on on direct, as to the number of those scintilla breaker assemblies that you delivered to Mr. Tomley?

A. I don't think I said I knew how many.

Q. Sir?

A. I didn't say I knew. I didn't count them. I don't know how many.

Q. You don't know how many it was?

A. I don't know just how many.

Q. Would you say it was 10 or 15, or 15 or 20, or 25 or 30, or 5 or 6?

A. I think it was between two and three hundred.

Q. Not less than 200 nor over 300?

A. That's right.

Q. Now I believe your testimony on direct examination, Mr. Wright, was, with respect to some spring, I believe you said you turned over to Mr. Tomley some springs. Is that right?

A. That's right.

Q. Well now, were those springs little bits of things about an inch long and maybe about a quarter of an inch wide?

A. Something like that.

Q. Were they all in a pile where you could pick up a handful of them? How did you deliver them to or turn them over to Mr. Tomley? I believe you said they were in a sack?

A. I taken—that's right.

Q. Little paper sack, and they were not in a carton or anything inside of the sack, just a bunch of them like you would have a sack of nails?

A. That's right.

Q. In other words you had a sack of them just like these I have in my hand?

A. That's right.

Q. Is that them?

A. That's some just like them.

Q. Well, that's what I mean. Are they some identically like them?

A. That's right.

Q. Look at them good. Let me put them in your hand. That's them? I don't say the same ones but some identically like them?

A. That's right.

Q. Very well. Hold those in your hand a moment there please. Now I'm going to give you a spring that is on a card and ask you to look at that and see if that is not also identically like those springs that you say you delivered to Mr. Tomley?

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Q. Put it on there for us please, sir. I'll put this one in my pocket.

A. Well, I would say as near as I can tell they are.

Q. You don't want to change your testimony however?

A. I say as near as I can tell. They all look alike to me.

By the Court:

We'll ask the Clerk to identify this second one, this spring that Mr. Wright has identified as an American-Bosch, as Defendant's Exhibit No. 2.

Q. Well, you took them to him in a sack sort of like I have these in a sack?

A. Just a paper sack, yes, sir.

Q. And they were in the condition these are? I mean separated just like you would buy a sack of nails. In other words you could pour them out in your hand just like I'm pouring these?

A. Well, there were a few of them in those little containers.

Q. A few were in containers?

A. That's right, small, about an inch or an inch and a half long containers.

Q. And you turned everything that you had over to Mr. Tomley?

A. That's right.

Q. I believe your testimony was also that you turned over 15 motors to Mr. Tomley?

A. Yes, sir.

Q. Were they in containers or just separate?

A. No, they were just separate. They were wrapped up in paper.

Q. Well, I'll hand you a motor and ask you if that is one of the 15 like you say you delivered to Mr. Tomley?

A. No, sir.

Q. That is not?

A. No, sir.

* * * * * * * *

Q. Now, Mr. Wright, I'll hand you another little electric motor and ask you does that look like one you contend you turned over to Mr. Tomley?

A. That looks like it.

Q. In fact, that looks just exactly like it, doesn't it, like one of them? I don't say it is one. I say it looks like it?

A. It looks an awful lot like it.

Q. Well, can you say that's not one of them that you actually turned over to him?

A. I can't say that that's one of them that I turned over to him, but it looks just like one I did turn over to him.

Q. Very well. We'll put a tag on that, may it please the Court, and identify this one as Defendant's Exhibit No. 3.

By the Court:

Do you wish to identify that other one or not? He was asked about another one while ago which he said was not like the one turned over?

Mr. Miller:

Yes, sir, I think that's a good suggestion. Let's make that Defendant's Exhibit 3. The one he states did not look like the one he turned over to Mr. Tomley we are identifying as Deft. Ex. 3, a small electric aircraft motor, and Number 4 is a small aircraft electric motor and is the one that the witness Wright has identified as looking just like one of the ones he delivered to Mr. Tomley.

* * * * * * * *

Q. What did you say?

A. I said it looked a lot like it. Some of those motors are different lengths, some a little bit longer than others and some a little bit larger around than others.

Q. Very well. Did the one you said you delivered to Mr. Tomley, were they different in size, some shorter than others, or were all of them identical?

A. I think they was all identical.

Q. Well, your best recollection, the last one you looked at here, defendant's exhibit 4, is that your best recollection of the type you gave to him?

A. It is the type. It looks like it.

Q. You can't swear it was not the same and you can't swear it is the same you gave him?

A. I say it's an awful lot like the motor. That's what I say.

Q. Well, now this little tab here, Mr. Wright, that has been identified here as Govt. Ex. 3, do you say that you have seen that before?

A. Yes, sir.

Q. And from where did the Government get it, from you?

A. That's right.

Q. And when was that? Was that on the day of the conference between you and Mr. Crutchfield and Mr. Powell?

A. That's right.

Q. And where did you have it on your person at that time?

A. I had it in my bill fold.

Q. And from where did you get that Govt. Ex. 3? Did you say Tomley gave it to you?

A. I said he gave me the number down here and I found this in a box out there with some of this materiel and I just struck it in my bill fold.

Q. Oh, I see. You just put that in your bill fold because you saw it corresponded with the number that Tomley had previoulsy given you?

A. That's right.

Q. And that's the only reason you put it in your pocket, and that's the only connection it has with this case is to tie in, as far as you know, is to tie in with the number that Mr. Tomley gave you?

A. That's rght.

Q. Stating that he was interested in some of this materiel?

A. That's right.

Q. That's your testimony?

A Yes.

Q. I'm going to show you, if you'll bear with me please sir, another mechanical gadget here, and ask you what does that look like?

A. Looks like a breaker spring of some kind. I can't identify it.

Q. Do you contend that you delivered any of this type to Mr. Tomley?

A. No, sir.

Mr. Miller:

Well, we won't identify this as yet, if it please the Court.

By the Court:

Very well.

Q. Now, let's see if we can tie down any dates at all with any reasonable accuracy please, Mr. Wright. I know it may be difficult. When you say you delivered to Mr. Tomley some of these breakers as you call them, identified as Govt. Ex. 1, about what date was that? Can you figure it at all?

A. I'm afraid I can't fix the dates.

Q. Can you fix it during what year?

A. I would say that was somewhere in '54. Somewhere along in there.

Q. Can you tell us whether the early part of '54? '54 is a long time.

A. That's right.

Q. Could you tell us whether it was the early part or the latter part or—

A. I would say the latter part of '54, November.

Q. The latter part of '54.

Mr. Evans:

I don't think you heard the witness. He stated November, 1954.

Q. Did you say November?

A. Yes, sir.

Q. Oh, I thought you said the latter part. That's pretty much the same though. When was it you say you delivered to Mr. Tomley the scintilla breaker assemblies which you have identified as being like the one on Defendant's Ex. 1? Was that about the same time, before or after?

A. It was after. I don't remember just how long it was, maybe in December.

Q. And what about these springs, Defendant's Ex. 2, when was it you said you delivered some of those to Mr. Tomley?

A. That was in the next year. I don't remember what date. Couldn't even remember the month.

Q. The springs were in '55 you think, sir?

A. Yes.

Q. And the motors which you say Deft. Ex. 4 looks very much like the ones you say you delivered to Mr. Tomley, now when was that? Was that in the latter part of '54 or '55 or when?

A. I would think that was in '55, somewhere around April, March or April, something like that.

Q. Now I show you another metal gadget here and I believe your testimony on direct examination was that you never did deliver to Mr. Tomley any item or merchandise like that? I believe that's what you told Mr. Buford. Don't read the ticket. Just look at the merchandise for me first, please sir.

* * * * * * * *

Q. I understood that on direct examination Mr. Buford handed you this and asked if you delivered to Mr. Tomley any metal or gadget, or whatever you call this thing I have in my hand, to Mr. Tomley, and you told him no.

A. I don't remember telling him that.

Q. All right, sir, I'll hand it to you then and ask you if you did or did not deliver to Mr. Tomley any of these gadgets like I have here?

A. I did.

Q. Now how many was that and when?

A. That was in '55. I would say a couple or three hundred of them.

Q. Is that what you testified on direct examination? Do you recall testifying on direct examination with respect to this item I have here?

By the Court:

Don't you want to mark that now so the record will be clear?

Mr. Miller:

I'm going to mark one just like it that I have on this other card, Your Honor, as Defendant's Exhibit No. 5.

Mr. Buford:

If you don't have any objection I would like to get ours marked too, because he has showed it to the witness, and make sure that is the same one when I go back to examining it.

Mr. Evans:

May it please Your Honor, this witness is being questioned outside of the record as I understood it

to be. This witness testified it was not this item that he delivered on the first occasion, and the question was put to him was this the item that you delivered on the first occasion, and he has since testified that he delivered these items, this same little item here that he has just exhibited to him on other occasions.

By the Court:

Well, the jury will have to remember the evidence, but I do think we ought to mark all these little tricks as an exhibit so we can look back to the evidence and see what he did testify.

Mr. Buford:

If it is not out of order I would like to get this one identified, since Mr. Miller has carried it up there, so there won't be any question about it.

Mr. Miller:

All right, we'll get it done, Mr. Clerk.

Clerk:

Could you describe it for me?

Mr. Miller:

We'll get the witness to.

Q. I'm handing you this metal gadget we have identified and just been discussing. Give us your name for that please sir?

A. I would call it a contact.

Mr. Miller:

Q. A contact, Mr. Clerk, Deft. Ex. 5.

Clerk:

Govt. Ex. 4 that has been identified, I take it also is a contact.

Q. Now, Mr. Wright, did you or did you not on direct examination here earlier today testify that you delivered any of those things you are calling contacts, deft. ex. 5, to Mr. Tomley? What did you say about it this morning? Isn't it true that you testified you did not deliver him any?

A. I said I didn't deliver that first one. I did deliver some of those later on.

Q. Now when was that?

A. I said it was in '55, February or March or somewhere along in there.

Q. And you call it a contact?

A. That's right.

Q. Now did he give you the number of the contact?

A. If I ain't mistaken it's the same number on that little card down there.

Q. Well, did he give you a number for this scintilla breaker assembly?

A. I think he did. He gave me several numbers.

Q. Well, now isn't it true that the number on this little card that you referred to, which is Govt. Ex. 3, calls for a contact assembly? Now this is a contact assembly isn't it, Deft. Ex. 1 that I have in my hand?

A. That's right.

Q. And then this little bitty hickey here that we just identified, that you call a contact, that's a contact by itself? It's not a contact assembly, because it's just one little item, and that's Deft. Ex. 5. T[illegible]'s correct, isn't it?

A. I suppose so.

Q. So then these—necessarily wouldn't this number here on Govt. Ex. 3 refer to this, Deft. Ex. 1, which is a contact assembly?

A. Reason I said that was on the box that those little contacts was in.

Q. This was?

A. That's right. The number of that was on the box.

Q. When you say this, you are referring to this tab? Govt. Ex. 3?

A. That was in the box.

Q. All right. Now do we have before you here, Mr. Wright, all of the types of merchandise you contend that you delivered to Mr. Tomley, or does this include them all?

A. Yes, sir.

Q. That I have before you here, and I'll identify them in a moment, if you say that's all.

A. That's all.

Mr. Miller:

All right, I would like for the record to show that the witness is referring to Defendant's Exhibit No. 1, Deft. Ex. No. 2, Deft. Ex. No. 4, Deft. Ex. No 5 and Govt Ex. No 1; five items

Q. Is that correct, sir?

A. Yes.

Q. Have you entered a plea of guilty in this case so far as it pertains to you?

A. Yes, sir.

Q. Did Mr. Groover, whom you have just talked about on direct examination, recommend that you plead guilty or did he recommend that you go to trial?

A. He didn't recommend either one. He asked me what I wanted to do.

Q. Left it up to you?

A. That's right.

Q. Well, is Mr. Groover the only lawyer that represented you in this matter at all?

A. Yes, sir.

Q. Up until the time you talked with Mr. Powell and Mr. Crutchfield you had not conferred with any attorney?

A. No, sir.

Q. And before you conferred with Mr. Groover, or rather prior to your converring with Mr. Groover you had already signed this statement?

A. That's right.

Q. And did your statement admit participation in these matters that you are charged with in the indictment?

A. Yes.

* * * * * * * *

Q. Do you have knowledge that your statement contains implication by you in the matters charged against you in this indictment?

A. Yes, sir.

Q. You read the statement?

A. Yes, sir.

Q. Well, now isn't it true, Mr. Wright, that when they arrested you for drunkenness and found these motors in your car that you sort of felt like they had the goods on you and you thought the best thing for you to do was to sign the statement implicating yourself and anybody else that they might suggest, and testify in the case as you are doing, that it would

probably be to your better advantage and the outcome would be to your better advantage to do that?

A. Well, I decided to tell the truth as near as I could about it and that's all I could do, tell it like it was as near as I could.

Q. Well, you do have hopes, don't you, of leniency because of your stating that you are telling the truth and testifying, or do you?

A. Well, I couldn't say that, I believe telling the truth should help me some.

Q. Well now, Mr. Wright, I believe in this indictment the allegation is made that on or about April 5, 1955 you transported 15 motor gun charges. Now right there I would like to interrupt myself to say, to ask rather, if Deft. Ex. 4, which I have in my hand, that's a motor gun charger? That's what we are talking about?

A. Yes, sir.

Q. That on that date, about April 5, 1955, you transported 15 motor gun charges, sometimes described as motor timer guns, from Robins Air Force Base to North Zeigler Apartments at Warner Robins. Now is that about the date, and did the Government in getting up this indictment, did they get that date from you?

A. Yes.

Q. So your best recollection is that that's the date that you took them from Warner Robins to your home in the Zeigler Apartments?

A. My best recollection.

Q. And you only took 15?

A. That's right.

Q. And you only delivered, I believe your testimony is, 15 to Mr. Tomley?

A. That's right.

Q. Now that was April 5. Can you give me any explanation of how, if you delivered 15 motor gun chargers to Mr. Tomley on April 5, 1955, how Mr. Tomley could have, on March 24, 1955, a couple of weeks before, shipped them to Rosenberg up in Buffalo, New York?

* * * * * * * *

Re-Direct.

By Mr. Buford:

Q. Mr. Wright, I have a few questions I want to get straight in my mind. Now of course you told me on direct examination that—called it to my attention that the period that these dates that you go his property, stole this property at Warner Robins and delivered it to Mr. Tomley, was between the period November 1, 1954 and May 10, 1955. Of course the FBI arrested you sometime in the early part of '55, which would be a year ago Is that correct?

A. That's correct.

Q. You haven't been working out at Warner Robins during the last year have you?

A. Since last—

Q. Been some time?

A. That's right. It's been a year.

Q. And, of course, you haven't been dealing in any of these parts since you left Warner Robins, have you?

A. No, sir.

Q. And the ones that you stole that you have told us about in the trial of this case are the ones that Mr. Tomley requested you to steal? Is that right?

* * * * * * * *

Q. All right, sir, I'll start over. Mr. Wright, the property that you got in this case that you have been discussing, who were you getting it for?

A. I was getting it for Mr. Tomley.

Q. Were you getting it for this man right here next to Mr. Miller?

A. Yes, sir.

Q. Right here in the center?

A. Yes, sir.

Q. Joseph Tomley?

A. Yes, sir.

Q. You said something about some stock numbers that he had given you, some air force stock numbers of this property. Who gave you those numbers?

A. Mr. Tomley gave me some numbers.

Q. Did you always try to get the property of the numbers he had given you?

A. Yes, sir, if I could find it.

Q. This one little number that we showed you here this morning, Govt. Ex. No. 3, that's not the only number Mr. Tomley ever gave you, is it? Of course, I understand he didn't give you this identical slip, but he gave you this number on here?

A. He gave me three or four or five different numbers.

Q. Did you make any permanent record of those numbers at the time he gave them to you?

A. I would write them down when he would give them to me.

Q. At the time he gave them to you and you wrote them down I'll ask you if you made any other record of them to save for the purpose of trial in Court?

A. No, sir.

Q. You told this morning on direct examination that your job out there as a warehouseman dealt with receiving and checking in property.

A. Receiving and shipping it, storing it.

Q. You weren't a mechanic?

A. No, sir.

Q. You are not holding yourself out as an expert on air plane parts, are you?

A. No, sir.

Q. Now you told Mr. Miller a few minutes ago in connection with defendant's exhibit 1, you were talking about a scintilla breaker assembly, you said you couldn't recall exactly how many you stole and turned over to Mr. Tomley, sold to him, that you would say between two hundred and three hundred. Is that correct?

A. That's correct.

Q. Now what about the American-Bosch breaker springs? How many would you say that you got?

A. I would imagine about the same thing, between two and three hundred.

Q. Of course, you didn't keep any permanent record of that either?

A. No, sir.

Q. You do remember it was 15 motor gun chargers?

A. That's right.

Q. Now of course at the time that you were—well let me start over so it won't be leading. I'll ask you if at the time you were making these deliveries to Mr. Tomley you had any idea that you would ever be sitting where you are sitting now?

A. I never thought about it.

Q. I'll ask you if you had thought at that time that you had a need for keeping those numbers and records would you have kept them?

* * * * * * * *

Q. You didn't keep any permanent record of them?

A. No, sir.

Q. You just made a record as he gave you the number, as I understand from what you said?

A. That's right.

Q. And it was two to three hundred scintilla breaker assemblies and two to three hundred American-Bosch breaker springs?

A. Right.

Q. Both of those items had—

* * * * * * * *

Q. Let me ask you this. What was it you told us back here in the alley—that took place back here in the alley behind the Central Hotel, a conversation between you and Mr. Tomley that night when Mr. Clot introduced you to him? What kind of part did he say he wanted?

A. He said those breakers and springs that had platinum on them, of course.

Q. Breakers and springs that had platinum on them? Who was doing that talking?

A. Mr. Tomley and myself.

Q. Now this is the item that Mr. Miller brought to you here a few minutes ago, got off of our table, and

I put Govt. Ex. 4 on here, a tag. I'll ask you what that is?

A. I would call it a contact.

Q. Contact? That's what you call it?

A. Yes, sir.

Q. I'll ask you if you have ever stolen any of these items out there at Warner Robins Air Force Base and turned them over to Mr. Tomley?

A. Yes, sir.

Q. Could you give us an idea how many of those?

A. I imagine about two or three hundred.

Q. That's your best estimate?

A. Yes, sir.

Q. Government Exhibit 1 is the item that you said you got from Mr. Clot and carried down there and he asked you to turn over to Mr. Tomley. How many of those did you get?

A. I would say around a hundred and fifty maybe, something like that.

By the Court:

What exhibit is that?

Mr. Buford:

Govt. Ex. No. 1.

Mr. Miller:

And what was that other Govt. Exhibit you asked about before 1?

Mr. Buford:

Four.

Q. Now of course I don't suppose you recall the exact dollars and cents you got paid for all these items you turned over to Mr. Tomley?

A. No, sir.

Q. Was all of it government property that you have been talking to us about?

A. That's right.

Q. All the property that you have been talking to us about in the trial of this case today came from Robins Air Force Base?

A. Yes, sir.

Q. Property of the United States?

A. That's right.

Q. When you first conferred with Mr. Tomley down there this night in the alley behind the Central Hotel, had Mr. Clot introduced him to you, or did he know what your name was?

A. Mr. Tomley?

Q. Yes.

A. I don't think he knew what my name was.

* * * * * * * *

A. He didn't know.

Q. When was it he found out who you were, your name?

A. Well, I guess I told him my name that night.

Q. That night, during the conversation?

A. Yes, sir.

Q. I'll ask you if he knew you were working at Warner Robins as a warehouseman on this first night you met with him?

A. I suppose he did.

Re-Cross.

By Mr. Miller:

Q. I'm going to show you a box of gadgets, Mr. Wright and I want you to tell me whether or not that

is a box of these things that you have identified as scintilla breaker assemblies, that's identified as Defendant's Exhibit No. 1. Look at them, please sir.

A. That's what I would call them.

Mr. Miller:

I'm going to put a ticket in there, Mr. Clerk, and call that Defendant's Exhibit No. 6, identified as what the witness Wright calls a box of scintilla breaker assemblies, with quite a number in there.

Q. Mr. Wright, how many breaker assemblies would you estimate are in that box that we have identified as Defendant's Ex. No. 6?

A. Looks like it ought to be about 150 in there.

Q. Now I have something here in my hand that looks to me sort of like a movie camera. What is that, please sir? That's a bigger piece of mechanical equipment.

A. That looks like a magneto.

Q. Is that a Bendix scintilla magneto?

A. Yes, sir.

Q. Is that what the plate on it says?

A. That's what it says there.

Q. And when you look at this end here do you see any Bendix scintilla breaker assembly, two sets of them, on this end?

A. Yes, sir.

Q. That's part of the whole magneto, is it not?

A. That's right.

Q. And do you know whether or not there is another set of them on another end somewhere?

A. No, sir.

Q. You don't know that much about it?

A. No, sir.

Q. I don't either.

Mr. Miller:

We are going to identify this particular magneto, may it please the Court, as Defendant's Ex. No. 7, a Bendix scintilla magneto.

Q. And I believe that Exhibit 7, that Bendix scintilla magneto you just identified, has breaker points on it the same as the breaker points you say you delivered to Mr. Tomley, which is Deft. Ex. No. 1, to the best of your knowledge?

A. That's right.

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The Clerk:

Do you want these identified, Mr. Miller?

Mr. Miller:

What I would like to do is identify all three of these. They are identical, and I would like to identify all three of them in a box as Deft. Ex. No. 7.

Mr. Evans:

Your Honor, I just wonder what the purpose is of offering three magnetos in here. I think we have a right not to have the Court room cluttered up.

By the Court:

Well, he hasn't offered them yet. Mr. Clerk, identify them as 7-A, B & C, so we'll have a tag on each one.

Mr. Miller:

I don't mind taking the time to explain why I'm offering them. Mr. Evans didn't want to be compelled

to tell what his contention is. I'm willing to tell why I want them.

Mr. Evans:
I have no objections to one of them, Judge.

Mr. Miller:
I impounded them down at Warner Robins yesterday on a sale that was supposed to open up today, and if I had found three thousand of them I would have brought them up here.

By the Court:
Well, I'm ruling with you so go ahead.

Mr. Miller:
I was just saying that for the benefit of Mr. Evans. He wanted to know and now he knows. Let me see what this witness knows. I may be able to dispense with two or three other witnesses.

By the Court:
Very well.

Q. Mr. Wright, I have here another piece of machinery of some sort. Do you know what that thing is?

A. I don't know what it is.

Q. All right. I hand you another piece of some sort of a machine it looks like. Do you know what that is?

A. I've handled that. It looks like what we call gun chargers. It's called a gun charger.

Q. Do you know that that particular item I have here in my hand that you call a gun charger, do you

know whether they have in them motor gun chargers of the type or similar to Defendant's Exhibit No. 4, this little electric motor?

A. I don't know what type they have in them.

Q. Do you know, as a matter of fact, that they do have an electric motor which is called a motor gun charger of some type or other?

A. I don't know that they do. I have never seen it. I have an idea that they do.

Q. Where would you say it is if it is in there?

A. Right there.

• • • • • • • •

A. You can see one there in one end of it now. Right there, isn't it?

Q. I don't know sir.

A. Looks like one.

Q. Yeah, I do now, since you pointed it out to me. This is the first time I've seen this thing. You've seen them before. Do you know how to get that thing out of there?

A. No, sir.

Q. And when you look at it here now, although it's a little on the dirty side, that does look pretty identical to Deft. Ex. No. 4 doesn't it?

A. To look at it it does.

Q. You haven't got any idea where this came from that I have in my hand?

A. No, sir.

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Mr. Miller:

Yes, sir, I think so. We will identify this last item, may it please the Court, as Defendant's Ex. No. 8, a motor gun charger assembly, I reckon.

(Ten minute recess.)

Q. Mr. Wright, you made some mention that these motor gun chargers, these electric motors, some were fat and some skinny, some were long and some were short. These motors that I'm laying here before you, some six of them, is that what you were talking about, some with little thickness and some fat like these and some long?

A. All I ever seen were the color of that one over there, maybe some of them a little longer.

Q. You've never seen any like these six I have here?

A. No, sir.

Q. In other words the only ones you have ever seen are the ones like Defendant's Ex. No. 4, this black one here, and maybe some a little longer than that?

A. That's right.

Q. Now let me show you something here I have just unwrapped and ask you do you know what that is?

A. No, sir.

Q. You don't know what that is?

A. No, sir.

Q. All right. That's all.

Re-Direct.

By Mr. Buford:

Q. I have two other questions to ask you that I over-looked while ago. I recall you mentioned calling Mr. Tomley from the Victory Drug Store at times. Where is the Victory Drug Store?

A. In the Warner Robins circle.

Q. It's at Warner Robins, Georgia?

A. Yes, sir.

Q. And you were living in the North Zeigler Apartments at Warner Robins?

A. That's right.

Q. And you would call Mr. Tomley from the Victory Drug Store at Warner Robins, Georgia?

A. That's right.

Q. Where would you call Mr. Tomley?

A. I would call him at the Central Hotel.

Q. Well, now, during the period November 1, 1954 up to say about Christmas, 1954 could you give us an idea how many times, roughly speaking, that you called him?

A. I would say I called him three or four times.

Q. Well, what about from Christmas, 1954 up to about May, 1955?

A. Probably five or six times.

Q. And those calls were made from the Victory Drug Store there at Warner Robins down to the Central Hotel in Macon, Georgia?

A. That's right.

Q. And you talked to Mr. Tomley.

* * * * * * * *

Q. Mr. Wright, when you were first arrested and Mr. Powell was interviewing you—Mr. Powell here of the FBI—he was discussing with you about American-Bosch breaker springs and of course you told him what you knew about them, and told him about how many, told him about getting some out at Warner Robins for Mr. Tomley. I'll ask you if you told him anything about the little glass tubes that these springs came in?

A. That little tube? Yes, sir.

Q. I want to show you an envelope here first and ask if you have ever seen those items there before?

A. I have.

Q. Are those little glass tubes—let's take two or three of them out here where the Judge and jury can see them—little glass tubes here, are these the ones that you showed to Mr. Powell out there at Warner Robins?

A. That's right.

Q. Well now, where did you show those to Mr. Powell at, or what part of the Robins Air Force Base were they located on?

A. Down on the open storage where I was working.

Q. What is the open storage?

A. That's where the materiel is stored outside and it's called the open storage.

Q. I see seven of these little tubes that you are describing, and you say that you carried Mr. Powell down to the open storage there at Robins Air Force Base and pointed these out to him?

A. That's right.

Q. Well, did you put these there?

A. Yes, sir.

Q. What came in these tubes?

A. Those little springs.

Q. The springs that you have been telling us about here today?

A. That's right.

Q. Well, did you pull the springs out of the tubes and then throw the little glass tubes down?

A. That's right.

Q. And did you and Mr. Powell pick these up there off of the ground where you showed him that you had thrown them?

A. Yes, sir.

Q. And these appear to be them?

A. That's right.

Mr. Buford:

I would like to have these 7 glass tubes in this envelope identified as Govt. ex. No. 5. And I would like to state into the record that one of the seven tubes, at least one of them—there might be another one—has a label on it "AB aviation magneto part, SP 5287."

Q. Did you help Mr. Powell pick those up there after you showed them to him?

A. I don't remember whether I helped him pick them up or not. I couldn't say that I did.

Q. But you showed them to him right there?

A. I showed them to him.

Q. At the open storage lot there at Robins Air Force Base?

A. That's right.

Q. Was it the same day that you were arrested, or close by?

A. Yes, sir, same day.

Q. Now, Mr. Miller has asked you about pleading guilty to this indictment. I would like to ask you

if you have ever stolen and sold to any one other than Mr. Tomley here?

A. No, sir.

Re-Cross.

By Mr. Miller:

Q. Mr. Wright, just where in this open storage area were these little tubes picked up, or rather you showed them to Mr. Powell?

A. Just out there on the open storage. It was in a kind of a wing section there.

Q. A what?

A. Where an airplane wing was crated up. The end of it was out and I pitched them up in there.

Q. And had you previously put them there you say?

A. Yes, sir.

Q. Now were these springs you are talking about, before you put your hands on them, were they stored there in this open storage area?

A. Yes, sir.

Q. Was that in Class 27?

A. Yes, sir.

Q. Where they were stored?

A. Yes, sir.

Q. And I believe you have already testified that items from Class 27 move on over to salvage?

A. Usually goes as—it's excess property and goes to disposal.

Q. When you say "goes to disposal" you mean what I call salvage or surplus, where it's sold to people that want to come down there and buy it?

A. That's right.

Q. So your testimony is then that these springs were on the way to disposal or excess or salvage or surplus to be sold?

A. They were going there I suppose, yes, sir.

Q. And you short circuited some of them?

A. That's right.

(Witness excused.)

MR. WALTER ETHRIDGE SHULER, being called by the Government, testified as follows:

Direct Examination.

By Mr. Buford:

Q. What is your name, please sir?

A. Walter Ethridge Shuler.

Mr. Buford:

If Your Honor please, we are putting this witness up for one purpose and that is to show the Government cost of the property that is involved in this indictment, and that's the only purpose we are putting him up for. He's a value witness.

Q. You work at Warner Robins, or Robins Air Force Base?

A. Yes, sir.

Q. What is your position out there?

A. I am the supply inspector.

Q. I believe you had a subpoena served on you in connection with the cost and valuation of certain items of government property?

A. Yes, sir.

Q. All right sir, I want to ask you about some of the prices of various types of property. First, I would like to ask you what is the Government's cost on American-Bosch breaker point springs, Model No. SP 5287, B 47 on one, SB 5287, dollars and cents.

A. (Looking in book.) SP 5287—

Mr. Miller:

May it please the Court, it would seem to me that we ought to fix a date on the Government cost. I imagine Government cost fluctuates like cost to everyone else.

Q. Of course the period we are interested in, Mr. Shuler, as I indicated in the subpoena that was served on you—I think Mr. Powell probably has communicated with you too—the period we are interested in in this case is November 1, 1954 up to or thru May 10, 1955. Now I guess you have a current manual there in your possession. Let me ask you this. Were you working at Warner Robins November 1, 1954?

A. Yes, sir.

Q. In the same job you are in now?

A. Yes, sir.

Q. What did you say your title was?

A. Supply inspector foreman.

Q. Is there any variation in the prices on the parts that we subpoenaed you in connection with between say Nov. 1, 1954 and now?

A. Well, there could be some small variation maybe. I wouldn't say it would vary over 20% either way, more or less?

Q. Wouldn't vary over 20%?

A. No, sir.

Q. Speak up a little louder please. Mr. Miller here and the members of the jury all have to hear you. Now give me the cost on the American-Bosch breaker point springs 4701-SP 5287.

A. Dollar seventy five.

Q. Is that for each spring?

A. Each one, yes, sir.

Q. Motor gun charges, Air Force No. 5910-50609625. Give us the cost of each item?

A. $20.05.

Q. That's a piece?

A. Yes, sir.

Q. Now on GE Breaker Assembly 4709-8640813-G 3?

A. $8.00.

Q. $8.00?

A. Even, yes, sir.

Q. 4704-1020236 and 470410-20237?

A. 20236 is 64c and 20237 is 88c.

By the Court:

What are those, Mr. Buford?

Mr. Buford:

Contact points.

Q. Now platinum pointed spark plugs, AC-181 and AC-281?

A. AC-181 is three eighty. AC-281 is three sixty five.

Cross Examination.

By Mr. Miller:

Q. What is the date of your manual there, Mr. Shuler, that you are testifying from?

A. The effective date of this was the 15th of February, 1956.

Q. And I believe your testimony is that the Government procurement or cost price of these items back a year or a year and a half ago could be 20% less than the price you have just given?

A. Could be, yes, sir.

Q. Now give me a few prices, please sir. Talking about spark plugs now. RB-19R?

A. Two ninety five.

Q. Let me find my list and I can shorten this. RB 23-R?

A. Two forty.

Q. RP 43-S?

A. One ten.

Q. LE-44?

A. One fifty five.

Q. And I believe you have given us AC-181. Now about RN 5 over three?

A. RN 5-3?

Q. I've got it RN 5 over 3.

A. It's 5-three.

Q. Sir?

A. It should be a dash. I don't have an over 3. I have a dash 3.

Q. All right sir, give me that. Seems to be the same one possibly.

A. Two thirty five.

Q. RB 5-5?

A. I don't have an RB 5-5.

Q. Do you have an RB 5 over 5?

A. No, sir.

Q. Well, would it be possible that types of plugs are discontinued from year to year? I mean could it be that a '54 book would have an RB 5 over 5 and your '56 book wouldn't?

A. It's possible, yes, sir.

Q. Well, do you have RB 5 over 2, 5 over 3, 5 over 4?

A. No, sir, just have a 5-3.

Q. Sir?

A. We just have it 5 dash 3.

Q. Let me have that, please sir.

A. Three seventy five.

Q. I want to show you here, Mr. Shuler, a copy of the trade paper dated March 2, 1955. Are you acquainted with this sheet?

A. No, sir.

Q. Well, now, do you see on this sheet an ad of L & H Supply, Inc., Dallas, Texas? Do you see under spark plugs—

* * * * * * * *

Q. Let me point out to you here, Mr. Shuler, just one or two of these and we will let the paper speak for itself, but I want to be sure we are talking about the same type. Is that AC—brand new AC 181 spark plug for $3.00? Is that the same one you were talking about?

A. It's the same number, yes, sir.

Q. Same number. All right, sir. And we get down here to reconditioned like new, AC 181, $1.50 each. That's the same number?

A. That's right.

Q. And as far as you know it's the same plug only you are talking about new ones, aren't you?

A. I'm talking about the cost of the plug to the Government.

Q. Brand new?

A. Yes, sir.

Q. Turn to your breaker assemblies there for me, please Mr. Shuler. Tell me what an SP 52205 cost the Government.

A. You have a code for that. You know the manufacturer.

* * * * * * * *

A. You know the code for that, the manufacturer's code.

Q. That's a spring then? Let me get up here.

Mr. Evans:

You have to give the manufacturer's code number.

Q. AB, BK 52109.

Mr. Evans:

American Bosch number is 4701, isn't it? Manufacturer's stock number.

A. Will you repeat that number please?

Q BK 52109.

A. I don't have that number, sir.

Q. All right, you have some motor gun chargers there. Let's look at General Electric, please sir.

A. We are getting into a different class of materiel.

Q. Yes, sir.

Mr. Evans:

May it please Your Honor, I would like to make a point of inquiry. If this examination is to test this gentleman's qualifications as an expert in the pricing field then we, of course, don't have any objection to it, but if it is just to bring in all kinds of parts that this man is not charged with stealing and start to investigating all of them, we have the same objection we do when he brings in all of these boxes of parts and just confuses the issue. I don't see the relevancy of it.

Mr. Miller:

I'm trying to stick to the items of the nature in the indictment. I'm picking this one up, Deft. Ex. No. 4, which has the same number on it as Deft. Ex. No. 3, I'm now looking at, and I want the price please of General Electric DC aircraft motor model 5 B A 10 A J 18 D.

A. 5 B A?

Q. Yes, sir.

A. 10 A J 18 A?

Q. 18 D.

A. 18 D? $20.05.

Q. And now I have in my hand, if Your Honor please, Deft. Ex. No. 7. This is a Bendix scintilla magneto, type DFN, manufacturer's DRG, whatever that is, 10-8038-15. Can you tell me what this entire unit cost?

* * * * * * * *

A. Will you repeat that number again?

Q. Yes, sir, that's 10-8038-15.

A. That's $120.00.

Q. Now Mr. Shuler, of course you've been testifying as to brand new prices. Can you give us the relative value of these same items that you have been talking about? Let's start with the first spark plug. The value after they have been used and are placed in salvage or Class 27. You know what that is, don't you?

A. Yes, sir.

Q. Class 27, prior to going to surplus disposal.

* * * * * * * *

Q. Take the American Bosch spring that you identified the cost there for Mr. Buford, AB SP 5287. You said the Government cost was $1.75. What value would you place on it if you were qualified to put a value?

A. I'm not qualified to put a price on what we class as repairable merchandise.

Q. All right, sir, let me ask you this. You are out there at Warner Robins in supply. Would you say that what the Warner Robins Surplus Depot sells it for is a fair value?

A. I couldn't answer that because I'm not connected with salvage and I'm not familiar with their sales, with their selling of the materiel.

Q. Well, you are connected with supply?

A. Yes, sir.

Q. And you do know that the items sold at salvage are supposed to be sold at their fair value so that the Government can recoup as much of it's original procurement cost as possible. That's correct, isn't it?

A. Yes, sir.

Q. So you have no reason to deny or refute the statement that whatever they are sold for at salvage is the fair value—

* * * * * * * *

Q. I understand your testimony is that you have no basis on which to refute or contradict the statement that what the Government sells these items for at salvage is the fair value of the items?

* * * * * * * *

MR. C. V. POWELL, being called by the Government, testified as follows:

Direct Examination.

By Mr. Buford:

Q. State your name please?

A. Charles Victor Powell.

Q. We call you Vic?

A. That's right.

Q. You are with the Federal Bureau of Investigation?

A. Yes, sir, I am.

Q. I believe you were born and raised down here in Dooly County?

A. Yes, sir.

Q. How long have you been in the FBI?

A. Approximately 13 years.

Q. Mr. Powell, I believe you made an investigation for the Government involving Joseph Tomley and the man that was on the stand here today, Andrew Jackson Wright?

A. Yes, sir, I did.

Q. I'll ask you if you had occasion to interview Mr. Joseph Tomley, the defendant sitting here at this table, about this case?

A. Yes, sir. On September 20 I talked with Mr. Tomley regarding some shipments that he had made.

Q. I'll ask you if you asked him anything about 754 American-Bosch breaker point springs being shipped by him to Consolidated Aircraft Supply Company, 1784 East Avenue, Rochester, N. Y., by Eastern Air Lines?

A. Yes, sir, I did.

Q. What did Mr. Tomley say about that, Mr. Powell?

A. He told me that he had shipped the springs there, that the springs that he had shipped had been obtained by him as an accumulation of purchases with other lots purchased at Robins Air Force Base.

Q. Say he did ship them in that manner, though, by Eastern Air Lines?

A. Yes, sir, that's correct.

Q. Let me back up and ask you if you asked him anything about shipping a hundred American Bosch breaker springs to Harper Air Craft Supply, Dallas, Texas from Macon, Georgia, by air mail special delivery on or about December 1, 1954?

A. Yes, sir, I did.

Q. What did Mr. Tomley say about that?

A. He stated that he had sold springs to Mr. W. W. Harper of Dallas, Texas, the Harper Air Craft Supply Company, and he gave the same answer as to how he came into possession of the springs.

Q. I'll ask you if you questioned Mr. Tomley about shipping, on or about December 20, 1954, an unknown quantity of air craft spark plugs having platinum points by Eastern Air Lines, to Consolidated Air Craft Supply Company?

A. Yes, sir, I did.

Q. What did he say?

A. He stated that he had sold spark plugs on or about that date to Consolidated Aircraft.

Q. Did you ask him about January 20, 1955, about two thousand scintilla breaker assemblies having platinum points being shipped to Consolidated Aircraft Supply Company by Eastern Air Lines?

A. Yes, sir, I did.

Q. Did I ask you about that? I don't know whether I have or not, but tell me if I haven't asked you.

A. There were two different types. There were 2000 contact assemblies, one was No. 4704-10-20236, and one thousand 4704-10-20237, that he said that he had sold to Consolidated Aircraft at Rochester, N. Y. They were shipped by Eastern Air Lines.

Q. Yes, sir. Did you question him about 150 pounds of aircraft spark plugs having platinum points being shipped to Consolidated Aircraft Supply Company, Rochester, N. Y. by Roadway Express, Inc., on or about January 27, 1956—'55, I beg your pardon.

A. Yes, sir, I asked him about the spark plugs and he stated that he had shipped spark plugs to Consolidated Aircraft by Roadway Express on or about that date. He stated that they were used aircraft spark plugs.

Q. I'll ask you if you asked him about shipping some on or about February 16, 1955 to Consolidated Aircraft Supply, Rochester, N. Y., 150 pounds?

A. Yes, sir, I did, and he stated that he had shipped those as used spark plugs to Consolidated Aircraft.

Q. Now let me ask you about overt act No. 11. Did you question Mr. Tomley about on Feb. 25, 1955 shipping to Consolidated Aircraft supply Company 200 lbs. of aircraft spark plugs having platinum points, by Roadway Express?

A. Yes, sir, I did, and he stated that he had shipped on or about that date 200 pounds of used aircraft spark plugs to Consolidated Aircraft.

Q. Now overt act No. 12, let me question you about that. On or about March 24, 1955 Joseph Tomley shipped by Roadway Express to H. Z. Rosenberg and Company, Buffalo, New York, 36 motor gun chargers, sometimes described as motor timer guns. Did you question Mr. Tomley about that?

A. Yes, sir, I did, and he stated that he had sold small electric motors to H. Z. Rosenberg and had done so on more occasions than that, and stated that he had disposed of numerous small electric motors that he had had in his warehouse, and that he had made a shipment to Rosenberg. I believe Mr. Tomley commented at the time that he had numerous little electric motors in his warehouse that he had bought at Robins Air Force Base.

Q. I'll ask you, in your interview with Mr. Tomley, if the name Bilderback was mentioned, and if so tell us about it.

A. Yes, sir. Mr. Tomley told me that he had purchased a number of scintilla breaker assemblies from E. J. Bilderback. I believe it was 3000 breaker assemblies that he purchased in the amount of $2600.00, I believe it was, and that he had subsequently taken those breaker assemblies to California. I believe it was within a day or two that he had flown out there with them, where he sold them for $6,000.00, I believe he said.

Q. I want to show you Govt. Ex. No. 5 here. Take a peep in there and see if you have ever seen those items before in that envelope.

A. Yes, sir, I have.

Q. Seal it back up, Mr. Powell, and tell us what they are.

A. Well, they are small plastic vials, one of them having a number American-Bosch Aviation magneto Part SP 5287.

Q. Have these been in your possession?

A. Yes, sir.

Q. Up to today?

A. Yes, sir.

Q. In your custody and control?

A. Yes, sir, they have.

Q. Where did you get them from?

A. I got them at Robins Air Force Base on the open air storage lot there. They were ponted out to me by Mr. Wright in the wing section of an airplane that was stored on the base.

Q. Mr. Wright pointed them out to you?

A. Yes, sir.

Q. You picked them up there and have had them in your custody and control up to this trial?

A. That is correct. Mr. Buford, might I correct a statement I made a few minutes ago?

Q. Yes, sir.

A. You asked me if in my conversation with Mr. Tomley the name Bilderback was mentioned. I had been testifying to an interview with him on September 20.

Q. Yes, sir?

A. I had previously interviewed Mr. Tomley regarding the breaker assemblies he had bought from Mr. Bilderback. It wasn't in that same conversation.

Q. Oh, it was a different date?

A. Yes, sir.

Q. But you did talk with him about Bilderback?

A. Yes, sir.

Q. Mr. Powell, I think part of your investigation in this case took place down at the Central Hotel, did it not?

A. Yes, sir.

Q. Here in Macon, Georgia?

A. Yes, sir.

Q. I think you had some assistance down there, some FBI agents helping you?

A. Yes, sir.

Q. Tell us the nature of your investigation down there that led up to Mr. Tomley's arrest, what you saw and what you did down there.

A. Well, on May 9, 1955 I had filed a complaint and taken out a warrant for Mr. Tomley. Our investigation there on the night of May 9 was for the purpose of locating Mr. Tomley and attempting to effect his arrest and to see if he might have anything of evidentiary value in his possession.

Q. Was the hotel under surveillance down there?

A. Yes, sir. Some of us remained in the hotel over night. We arrested—or I arrested Mr. Tomley the following day, on May 10, there at the hotel.

Q. He didn't come in there during the night?

A. No, sir. That is not while I was there.

Q. Here's something I got off of the table over here. I don't know that it has anything to do with the case or not. What is that? If it doesn't have anything to do with this case why—

A. Yes, sir. It's one of the motor timer guns, or motor gun chargers. It's number 5069625, made by the Delco Appliance Division of General Motors Corporation. This was found in Mr. Tomley's room at the Central Hotel.

Mr. Buford:

Let me have this identified as Govt. Ex. No. 6, please.

Q. Govt. Ex. 6 is the item you were just telling us you found in Mr. Tomley's room?

A. Yes, sir.

Q. Of course you found some books and records down there in his room that you have already shown Mr. Wallace Miller, his lawyer too?

A. Shown him the books that I took from Mr. Tomley's room, yes, sir.

Q. He applied to the Court for it and you complied with the Court order and let him examine those books or documents?

A. That's right, yes, sir.

Cross Examination.

By Mr. Miller:

Q. Mr. Powell, in talking with Mr. Tomley, did he talk with you freely?

A. Yes, sir.

Q. Did he show you any and all records that you asked for?

A. Yes, sir, he did.

Q. But he didn't cooperate to your satisfaction in the investigation of the Bilderback case? That's correct, isn't it?

A. No, I wouldn't say that. He showed me what he had that I asked him about in that case, I think.

Q. You were investigating Bilde. oack?

A. I have investigated Bilderback, yes, sir.

Q. At the time you talked with Mr. Tomley about Bilderback and you were investigating Bilderback?

A. That's correct, yes, sir.

Q. And what time was that conversation?

A. That was in May of 1955, May 5, 1955.

Q. That was just prior to Mr. Tomley's arrest?

A. Yes, sir, just a short time.

Q. Tell us whether or not when you were talking with Mr. Tomley about Mr. Bilderback, if Tomley didn't tell you that "all of my dealings with Bilderback are on the books and records, and if you want them there they are", and you said something like this, substantially, to that, that you didn't think he was cooperating with you and told him if he didn't cooperate with you on the Bilderback case that "I'm going to make it hot for you, Tomley"?

A. No, sir, I don't recall saying anything like that. He told me that Mr. Bruski had his records of the transaction that I was interested in as far as Bilderback was concerned. Now I asked him about his transactions with Bilderback, and I think he told me —and he told me Mr. Bruski had his records.

Q. Well, regardless of your recollection of whether you told Mr. Tomley that or not, it's true that some four or five days later, after you were talking with Mr. Tomley about Rev. Bilderback is when you arrested Mr. Tomley?

A. That's correct, yes, sir.

Q. And it's true that on September 20, some four months after his arrest by you you went out and talked to Mr. Tomley and he freely and voluntariily told you all of the information you have just related to Mr. Buford here about selling American Bosch points to Consolidated, American-Bosch breaker springs to Harper, spark plugs to Consolidated, Scintilla breaker assemblies to Consolidated, spark plugs to Consolidated, plugs again to Consolidated, plugs again to Consolidated, and motor gun chargers to Rosenberg?

A. Yes, sir. May I explain that just a little bit. I went and talked with Mr. Tomley and Mr. Clot out there on that occasion out at the C. T. Sales ware-

house at Cochran Field. I explained to Mr. Tomley my position in it, that if he didn't care to discuss it he didn't have to discuss any matters with me, and I knew that he had retained Mr. Jessup as his attorney and I told him that if he desired to do so to call Mr. Jessup and see if it would be satisfactory to go over those items with him, and he told me he had already contacted Mr. Jessup and he would be glad to discuss these items with me.

Q. And that Mr. Jessup had told Tomley to divulge any information you wanted and show you any records?

A. He told me he would be glad to discuss these transactions I discussed with him.

Q. He discussed freely every transaction you brought up?

A. That's correct.

Q. That was September, 1955, some four months after the arrest?

A. Yes, sir, September 20.

Q. Aren't you a little mistaken there? Look at your notes. I realize you are testifying from them and a man can't recall everything. Aren't you a little mistaken concerning the scintilla breaker assembly shipment to Consolidated?

A. To Consolidated?

Q. Yes, sir. Let's see your notes there because from my recollection of what you said everything is according to Hoyle except that one.

A. I said that there were 2,000 contact assemblies, and the stock numbers were 4704-10-20236 and 4704-10-20237. That was information I had as to what had been shipped up there.

Q. But you didn't get that information from Mr. Tomley, however?

A. Not as to these numbers. I just asked him whether or not he had shipped them and he stated that he had.

Q. Shipped what?

A. These items here.

Q. What items?

A. The 2000 contact assemblies.

Q. All right. He didn't give you any numbers?

A. No. I had the numbers.

Q. You got them from where?

A. I got them from Consolidated, or in a report from—

* * * * * * * *

A. Now I asked Mr. Tomley if he had shipped these articles and he stated that he had.

Q. But you didn't give him the numbers?

A. I had the numbers.

Q. I know you did.

* * * * * * * *

Q. Now, Mr. Powell, as I understand it, before you talked with Mr. Tomley on September 20, your testimony is that you ascertained from somebody, Consolidated, up in New York, that the numbers of the scintilla breakers involved were 4704-10-20236, a thousand of those, and a thousand of 20237, and you went out there and said to Mr. Tomley, "I want to ask you about some of these shipments. How about a shipment on January 25, 1955 of 2000 scintilla breakers to Consolidated in New York? Did you make the shipment?" He said "Yeah".

A. I had the specific information as to what had been received up there by the numbers, and I asked him if he had shipped those.

Q. Numbers? Did you mention the numbers to Tomley?

A. As I recall I read the numbers off to him, of the contact assemblies, yes, sir.

Q. Well, he's just mistaken. I don't think Consolidated is going to bear it out, but if that's your recollection, very well. I was just trying to clear it up. Now, Mr. Powell, this sale that you made mention of, of some 3000 scintilla breakers that Mr. Tomley says he bought or were bought from Bilderback, that was a purchase by the corporation known as C. T. Sales? It was not a purchase by this man individually, was it?

A. He told me that he handled the transaction.

Q. I understand he handled it for C. T. Sales, a corporation?

A. That's correct, yes, sir.

Q. And the figure you give us here of some $3200—$3400 profit, that was the profit of the corporation?

A. Yes, sir, that's right.

Q. You didn't go into some of these deals where he bought stuff and might have lost $3400 on the deal, did you?

A. No, sir, I didn't have that information.

Q. You didn't look for it, did you, sir?

A. No, sir, I wasn't interested in that.

Q. Now I believe you stated that you had Mr. Tomley's hotel under surveillance during the night of May 9, 1955, and that while you were in there he didn't show up?

A. Not in the Central Hotel, no, sir.

Q. Did you see him anywhere that night?

A. I think I saw him in the lobby of the Macon Hotel.

Q. You didn't arrest him then?

A. No, sir.

Q. You didn't make an attempt to?

A. No, sir.

Q. Very well, that's all.

Re-Direct.

By Mr. Buford:

Q. Just one other question. Mr. Miller has asked you something about C. T. Sales. Do you know who the C. T. Sales is composed of, what people run that organization, or corporation?

A. Mr. R. H. Clot and Mr. Joseph Tomley are the principal stockholders in the corporation, as I understand it.

Q. You have been in the Courtroom here all day?

A. Yes, sir.

Q. You heard Mr. Wright testify?

A. Yes, sir.

Q. Is that the same Clot that he was talking about on the stand?

A. I assume so. That's the only Clot that I know.

* * * * * * * *

Mr. Buford:

At this time, Your Honor, I would like to tender in evidence the evidence that has been identified in this case so far.

I tender Govt. Ex. No. 1, which is an item of property that has been identified by the witness Wright as being the type of property that Mr. Clot requested him to steal at Robins Air Force Base.

Mr. Miller:
We object to that statement of Counsel if it's considered as evidence. If it's just for the purpose of identifying the items, very well.

By the Court:
Yes, Counsel can not testify unless they get on the stand, so what you say is just for identification.

Mr. Buford:
No, sir, I hadn't sworn myself as a witness. I'm trying to get my evidence admitted. Govt. Ex. No. 1, we take the position that the evidence shows—

By the Court:
Well, is there any objection to it?

Mr. Miller:
No, sir.

By the Court:
It is admitted then.

Mr. Buford:
Govt. Ex. No. 2 is a card with the name Joe Tomley on it, and "Robert E. Lee—

Mr. Miller:
No objections.

By the Court:
Admitted.

Mr. Buford:
Govt. Ex. No. 3—

Mr. Miller:
No objections.

By the Court:
It is admitted.

Mr. Buford:
Govt. Ex. No. 4.

Mr. Miller:
I would like to see that if I may. (Examining it). No objections.

By the Court:
It is admitted.

Mr. Buford:
Govt. Ex. No. 5 is an envelope with some empty glass tubes in it that Mr. Powell and Mr. Wright both have identified.

Mr. Miller:
No objections.

By the Court:
It is admitted.

Mr. Buford:
Govt. Ex. 6 is a motor that Mr. Powell said he found in Mr. Tomley's room.

Mr. Miller:
No objections.

By the Court:
It is admitted.

Mr. Buford:

At this time the Government rests its case, and since we have rested our case we would like to make this announcement to the Court. It appears that the evidence as to counts 5, 6 & 7 of the indictment relating to the defendant Joseph Tomley might not be clear and convincing, and rather than prolong the trial of this case, in the interest of time, the government is going to move that a judgment of acquittal as to Counts 5, 6 & 7 be granted the defendant Joseph Tomley.

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Mr. Miller:

Your Honor, before opening our evidence I would like to move the Court to permit me to ask Mr. Powell a few more questions on cross examination that I over-looked yesterday.

By the Court:

All right, sir. Any objections to that?

Mr. Evans:

I just wondered if it relates to the matters we have already gone into?

Mr. Miller:

Yes, sir.

By the Court:

If it doesn't it wouldn't be cross examination. Very well, go ahead.

MR. C. V. POWELL, being recalled for further cross examination, testified as follows:

Cross Examination.

By Mr. Miller:

Q. Mr. Powell, I believe on yesterday you were relating the conversation that you had with Mr. Tomley on September 20, 1955?

A. Yes, sir.

Q. And I believe you testified on yesterday—if you didn't, correct me, please, sir—that Mr. Tomley stated that he did ship somewhere around 754 American-Bosch points to Consolidated about the date that you mentioned yesterday, and he explained that that was an accumulation of his purchases?

A. That is correct, yes, sir.

Q. And also with respect to a hundred American-Bosch points to Harper on or about December 1, 1954, Mr. Tomley stated he made that shipment and also advised you where they came from?

A. That—

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Q. Now with respect to the scintilla assemblies, I believe shipped to Consolidated on or about January 25, 1955, your testimony was that Mr. Tomley—correct me if I am in error—stated that he made a shipment of them, and there's some difference in the contention about the numbers?

A. Yes, sir.

Q. And he explained where he got those, from a legitimate source?

A. Yes, sir, that's correct. Mr. Miller, may I make one statement there? In looking thru my notes there I found that Mr. Tomley, as regards those contact assemblies, had told me that he had received, I think

it was, a thousand of them from Mr. Roberts who had been a surplus property buyer, and who at that time was dead, and the others, as I recall, had been an accumulation of purchases.

Q. Now with respect to the motor gun chargers, I believe, that were shipped to Rosenberg around March 24, 1955, Mr. Tomley stated he made that shipment and explained to you where he got those motors, from a legitimate source?

A. That's correct. That was his statement, yes, sir.

Mr. Miller:

That's all, Your Honor. We have a motion to submit to the Court.

Mr. Evans:

May it please the Court, we would like to take the witness on rebuttal if we may.

By the Court:

Very well.

Re-Direct.

By Mr. Evans:

Q. Mr. Powell, did Mr. Tomley point out to you any specific places that he got this material?

A. He showed me no papers or records of where he had bought it.

Q. Was there any place that he pointed out to you that you could go back to and verify the fact that he had bought it there?

A. No, sir. He only said it was an accumulation that he had obtained.

Q. Did he specifically say any particular date that he bought any item, or did he get any invoice out to show you and say, "Here's the invoice that I bought these items on", any of them?

A. No, sir, he did not.

Q. If he had made such a statement to you would you have gone back to that source to have seen if he had made the purchases he said he had?

A. Yes, sir, we were trying to trace out all of it.

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MR. W. G. JENKINS, being called as a witness by the Defendant, testified as follows:

Direct Examination.

By Mr. Miller:

Q. Mr. Jenkins, are you employed at Warner Robins Air Materiel Area?

A. Yes.

Q. How long have you been there?

A. Fourteen years.

Q. In what capacity are you now employed?

A. I am Chief of the Warehouse.

Q. When you say warehouse does that have to do with supply of aircraft items?

A. Yes, sir, that is the supply.

Q. Well, now back in the fall of '54 through about the middle of May, 1955, what was your capacity out there?

A. Same position I hold now.

Q. Well now they have a surplus disposal department out there where surplus items, aircraft items are sold, do they not?

A. Yes, sir.

Q. And they have had for years, including '53 and '54?

A. Yes, sir.

Q. Well now explain to us as briefly as you can how those items are processed, how they come about getting in surplus disposal.

A. Well, there are two means, one is condition condemnation, and then the other is when items become excess to the requirements of the air force.

Q. Right there now, items that become excess? They can be new, can't they?

A. Yes, sir.

Q. And is an inventory taken out there once a year to determine what is excess?

A. No. The excess lists are prepared by Headquarters AMC.

Q. Well, is inventory taken out there once a year to determine that some items may go into salvage?

A. No, there's no determination made from the Base as to what will go into salvage, except condition condemnation. Excess items are always sent down from Headquarters AMC.

Q. Has that been the procedure for the last ten years, say?

A. To my knowledge, yes, sir.

Q. All right, sir, you have materiel that has been condemned as no longer usable, or not needed, and you have other materiel that is declared excess. How does that get over to salvage? What process does it go thru before it gets over to salvage?

A. Well, there's an intermediate class that they call Class 27. If materiel is declared excess to the needs of the Air Force that materiel is transferred into this Class 27, which is, you might say, a holding

class, and then there is a circulation of this type property to the other armed forces to see if there is a need for the materiel in possibly one of the other armed forces. After the materiel is circulated for a given period of time & there is no requirement for the materiel by any of the other armed forces, then the materiel is transferred from Class 27 into salvage for final disposition.

Q. All right, sir. Now explain to us please, briefly, the accountability for items. That is, if it goes in as salvage stuff it is more or less scrap or junk, and there's no accounting against procurement costs, whereas if it is sold per item there is some—

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Q. Now, Mr. Jenkins, maybe I can shorten it. Let me show you an exhibit here, or a piece of paper which I understand is called a delivery sheet. Are you familiar with those? You've seen them before?

A. I can answer your question like this, Mr. Miller. I am familiar with the form, but this particular transaction I am not.

Q. Well, tell us what the form is.

A. Well, this is a shipping form, a 104-c, that's used to ship materiel from one place to another.

Q. Can you tell me whether what you have in your hand evidences a sale and delivery of surplus items from Warner Robins?

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A. Let me explain this, Mr. Miller. You have gotten out of my department over into another department, and I am afraid that I can not tell you just what this transaction amounts to.

Q. All right, sir. Can you look at that transaction and tell me what the items on that paper consist of?

A. Oh I can read what the thing says.

Q. And that's all you can do?

A. That's all, sir. I can read what it says.

Q. Does it have magnetos on there?

A. Yes, sir.

* * * * * * * *

Q. Can you tell us what kind of magneto that is on there?

A. Not from looking at that paper, no, sir.

Q. Well, do you know of any records at Warner Robins that would disclose what type of magneto that was?

* * * * * * * *

Q. Read the date, Mr. Jenkins.

A. 21st of June, and there has been some writing over the last letter. I can't make it out.

Q. Look up at the middle where it says paid on a certain date. Is it up there.

A. Says "Paid", but all I see is an initial under there.

By the Court:

21st of June what year?

A. That's what I say, sir, the 5 shows but the other has been obliterated by the signature signed over it.

* * * * * * * *

Q. Can you tell me, Mr. Jenkins, what type of magneto was sold there or is sold or involved in that sheet?

A. No, sir.

Q. Do you know of any record that would disclose what magneto that is?

A. Might I make my position clear?

Q. Yes, sir.

A. In the supply division as a whole, or the supply directorate as a whole, it's broken down into divisions. My particular position is in the material facilities division, which has only to do with items which are air force items still in active stock. Once the authority is given down to transfer these items into the disposal division then I have no further jurisdiction over the items of the disposal division and I am not clear on the records and what have you of the disposal division.

Q. Well now, when the items leave your department and go to the disposal division do they lose their identity as to stock number and air force number?

A. I'll answer you like this. When they leave my division to go to the disposal division they go over as an air force item with the identifying stock number. What happens to them after disposal receives them, I can not say.

Q. The workmen who haul it from Class 27 over to disposal, are they under your jurisdiction?

A. Yes, sir.

Q. But after it leaves your Class 27, as I understand it, you don't know what happens to it?

A. Except this; the personnel who are engaged in moving this materiel over move it over, as I said, by item and an identifying stock number. Someone

in the disposal division checks this materiel against this paper work that I transferred it over on, and signs for receiving it. After that I am completely in the dark.

Q. Let me ask you, does that paper you have—and now I'm getting around to the last question, I think—does that paper you have disclose the stock number, manufacturer's number or air force identification number of the items that are involved on that sheet that you say were on it when it came from your department?

* * * * * * * *

A. No, sir. As I answered previously, when the materiel leaves the active air force account it is listed by an identifying stock number and a nomenclature such as you have here, or a name, but this paper does not have the identifying stock number. It only has the name on it.

Q. So what happened to the stock number, or identifying number, after it left your place, you don't know?

A. No, sir.

Q. Well now, were you ever in charge previously of salvage?

A. Yes, sir.

Q. When was that?

A. That was in January of '47 until April of 1950.

Q. Well now when you were in charge of salvage, didn't you use that type papers for sales, those forms?

* * * * * * * *

Q. When you were in salvage did you all use that type of papers for selling salvage to the general public, Mr. Jenkins?

A. Mr. Miller, I am a little hazy, since it's been six years. I don't remember that we used this particular form, probably some similar form. I'll say this; back when I was in salvage we operated under an army regulation, the old TM 38 404. Since that time they are operating under a different manual, which is the Air Force manual 67-1, and I haven't ever familiarized myself with the changes because I have had no reason to.

Q. That form doesn't look familiar to you?

A. Well, it's familiar to me from the fact that it's used in other places.

Q. I see.

Mr. Miller:

We'll identify this, Your Honor, so we will know what we have been talking about in the record, as Defendant's Exhibit No. 9.

Q. Now, Mr. Jenkins, didn't you produce in Court, and don't you have here today in Court records, papers, in files from Warner Robins Supply that have these type of sheets in them showing sales to Joe Tomley and Quality Supply and C. T. Sales?

A. No, sir.

Q. Who brought those up here?

A. They were brought by the disposal division.

Q. Who is that?

A. Col. Workman is one. I don't know whether they have anybody else from there. I know Col. Workman is the disposal man.

Q. How about Mr. Scruggs?

A. Mr. Scruggs is the disposal civilian chief.

Q. Is he the man that would know all about this?

A. I'm sure that he would have more information on those records than anyone else other than Col. Workman, possibly.

Mr. Miller:

Well, we are doing the best we can. I would like to ask this witness a question, Your Honor, to establish it.

Q. Did Mr. Jessup and I come out to the field and try to talk with you and get information and we were not permitted to come back and talk further, from higher authority than you?

A. You and Mr. Jessup came to my office to talk to Mr. Martin, the man who is under my employ. Now whether or not you weren't permitted to come back, I don't know.

Q. Did we request additional information from you, which you said you would give us but never gave us?

* * * * * * * *

Q. Mr. Jenkins, when we left we requested of you to give additional information, and I believe you were going to call in to me?

A. If I could obtain it.

Q. But you never called?

A. No.

Q. Why was that?

A. I couldn't obtain it.

Q. Why couldn't you?

A. It wasn't available to me.

Q. You couldn't get it? It was available to someone but not to you?

A. I don't know that. I know it wasn't available to me.

Q. Was it on the Field?

A. I don't know that.

Q. You couldn't get it?

A. I stated it wasn't available to me.

Q. You never gave it to me?

A. No.

Q. And Mr. Scruggs is the man that would know more about this?

A. Mr. Scruggs is the man that brought those records up.

Mr. Miller:

All right, sir. He's with you.

(No Cross Examination. Witness excused.)

MR. J. T. SCRUGGS, being called as a witness by the Defendant, testified as follows:

Direct Examination.

By Mr. Miller:

Q. Mr. Scruggs, are you an employee of Warner Robins Air Materiel Area?

A. Yes, sir.

Q. In what capacity.

A. Chief of Surplus Property Branch.

Q. Are you familiar with the type of document that I hand you here which is marked Defendant's Exhibit No. 9?

A. Yes, sir.

Q. Have you got the original of Exhibit No. 9 in your possession?

A. I don't think so, but I'll see.

Q. Well, where are the records you had up here the other day?

A. You subpoenaed Col. Workman for those records.

Q. Do you know where they are?

A. He has them.

* * * * * * * *

A. Is that 55-40? On the left.

Q. It says 54-50.

A. No, sir, I don't have that one.

Q. Well, while we are waiting on the records where are the magnetos that the subpoena said for you to bring to Court, which we had here yesterday?

A. I'll get them right in.

Q. We'll get somebody to get them. Where are they?

A. They are just outside.

* * * * * * * *

Q. Well, now can you tell us the date of Exhibit No. 9, please, Mr. Scruggs?

A. I can't tell you the exact date but it would be the 50th week.

Q. Be what?

A. The 50th week of the year. The Government fiscal year is from July 1 thru June 30, so it would be in the neighborhood of the middle of June, sir.

Q. Of '54?

A. Fifty five, sir.

Q. Fifty five?

A. The fiscal year '55 as far as the Government is concerned.

Q. Is that '55 right there?

A. No, sir, it's 54-50.

Q. Well, what I'm trying to ask you is the date that sale was made.

A. I would think this would be around the middle of June, sir.

Q. Of what year?

A. It would be the year '54, yes, sir.

Q. Fifty four?

A. Yes, sir, you are right.

Q. Very well. Now, can you tell us what kind or how many magnetos were sold on that invoice or that delivery bill?

A. No, sir, because I wasn't in the disposal business at that time.

Q. Well, could anybody who was in the disposal division at that time?

A. It's possible Mr. Fullington could.

Q. And how would he know? From memory?

A. Well, he would have to go back to his records. He could go back to the records and establish that fact, sir.

Q. Well, can you tell us, does that have a weight on it?

A. Approximately 300 pounds.

Q. Now when were you in charge of surplus down there? When were you there?

A. 31 October '54, sir.

Q. Until now?

A. Yes, sir.

Q. All right. When it says approximately 300 lbs., could that vary and maybe be 200 or 400 or more or less?

A. It could be more or less. That's an estimated weight, sir.

Q. Do you estimate them by looking at them?

A. The turn-in document has the weight posted on it, sir.

Q. Well now, do you know whether or not scintilla magnetos have scintilla breaker assemblies in them?

A. In some instances, yes, sir, when they are new serviceable items.

Q. Well, I mean brand new ones do, scintilla magnetos do have within them as an integral part scintilla breaker assemblies?

A. Yes, sir.

Q. And do you or did you, during the period you were down there, sell scintilla magnetos that had scintilla breaker assemblies in them?

A. For what period?

Q. The time that you were there?

A. We have sold some, yes, sir, a few.

Q. Do you know the number?

A. The stock number?

Q. No. The number that you sold?

A. Yes, sir.

Q. You mean according to your records?

A. Yes, sir. I got the number from November '54 thru May 5, '55, sir.

Q. According to your records?

A. Yes, sir.

Q. Very well, tell us.

A. A total of 174, sir.

Q. All right. Now do your records disclose everything that was sold down there during the period you were there?

A. Yes, sir.

Q. Every item?

A. I might ask for a clarification. In what respect, sir? You mean as far as on the sales advertisement, something of that nature?

Q. Well, can you tell me what merchandise was included in that particular sale there on Defendant's Exhibit No. 9?

A. No, sir.

Q. Can you name all of the items that were in there?

A. No, sir, I can't.

Q. You are in charge of salvage?

A. That's right, sir.

Q. And this is, as I understand it, a bill of delivery slip which is given to a purchaser who buys a lot from salvage down there?

A. That's one part of it.

Q. And what is the other part?

A. A cash sales slip with the exact duplicate of that merchandise indicated thereon, sir.

Q. In other words the cash slip that he gets has the same writing as the delivery slip as to the description of the merchandise?

A. That's correct.

Q. It would be just a duplication?

A. That's right.

Q. Well, I'll show you another delivery slip, please. Give me that one back, and I'll ask you the date of this? (Deft. Ex. 10)

A. I can identify the same number, but I notice the paid date is indicated 16 July 54.

Q. So the sale date was prior to that?

A. Yes, sir.

Q. Can you tell us the type of motors that were sold on that delivery slip?

A. No, sir. I wasn't in the division at that time.

Q. Sir?

A. I wasn't in charge.

Q. Well, I know, but you know surplus and you know supply down there. Can't you look at that and tell us?

A. No, sir.

Q. Could the purchaser who bought it look at it and tell? I think that goes without saying though.

A. I would think so. If he placed a bid on the materiel he should be able to know what was on it.

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Mr. Miller:

We will mark that one Defendant's Exhibit No. 10, Your Honor.

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Q. Mr. Scruggs, I'll show you another disposal delivery ticket and ask you if you can tell us what kind of springs were sold on that sale? (Deft. Ex. No. 11.)

A. Again, Mr. Miller, I was there beginning in '31, October, and this stuff all before that, I have no knowledge of.

Q. All right, sir. All these that I am showing you are sales to Joe Tomley individually?

A. Yes, sir.

Q. That was Deft. Ex. No. 11. Now here's one to Joe Tomley dated August 23, 1954, Deft. Ex. No. 12. Can you tell us what the A/C on that stands for?

A. Air craft.

Q. Well now, A/C on all of these stands for aircraft, doesn't it?

A. Yes, sir.

Q. Can you tell us what was included in that lot sale of air craft electronic residue?

A. No, sir, I can't tell you. It's prior to my time.

Q. How many pounds is it?

A. Three hundred.

Q. Could that vary more or less?

A. Yes, sir, it could be plus or minus.

Q. Now, with respect to this one that seems to be dated Aug. 30, Deft. Ex. No. 13, is your testimony the same as to the others? You can't tell us what type of magnetos those were?

A. No, sir.

Q. Now there's one here of September 15, 1954 to Joe Tomley which has on it aircraft motors and other things there, approximately 400 pounds, Deft. Ex. No. 14. Can you tell us what sort of aircraft motors those were?

A. No, sir. This is still before my time, sir. I might add, sir, that the pounds indicated on these documents here is not put on there for the purpose or as a criteria for putting in a bid. The Air Force uses their common denominator in their records in the instance of salvage. They convert everything to pounds and that's what it's used for. It's not used for any purpose of billing or accounting for the merchandise that goes out.

Q. Why do they convert it to pounds?

A. For their accounting records.

Q. Well, now, here's another one that seems to be dated around about September 23, 1954 to Joe Tomley. It has springs on it. Is your answer the same? You can't tell us what kind of springs? That's Deft. Ex. No. 15.

A. Yes, sir.

Q. Here's one to Joe Tomley, seems to be dated December '54, says 2000 pounds of various items. Can you tell us what all those items were?

A. From here, sir, I can't tell you other than what is on the document. I can't tell you the specific numbers.

Q. Can you tell me the makes, types, kind?

A. I don't have that information available, sir. The information is in the records at the disposal division. I couldn't tell you from this delivery document here whether there was five of this or four of that or two of the other.

Q. Who has those records? Are those the ones Major Workman has?

A. No, sir. The records identifying the magnetos and things of that nature, the request was made at such a late date that it was impossible to go back and dig out all of the information, considering the volume of material involved.

Q. Oh, I see. Then the answer to this subpoena, or rather the subpoena came too late to get this information that was requested in it. Is that what you are saying?

A. As far as going back to that amount of detail that you asked for.

Q. And the subpoena did ask for the exact number of items, the Air Force number, the manufacturer's number and the name of the item involved in these particular sales?

A. I don't recall the subpoena. It wasn't issued to me, sir, but I assisted in getting the records up.

Q. What I'm asking, if I were to call Col. Workman in here and put him on the stand and ask him for the records to tell us what's in here, he wouldn't have them because you say he didn't have time to get them up?

A. I don't think he would have it, sir. In other words, we have some 800 to a thousand documents

come in a day and to go back thru that many it takes considerable time to identify the material.

Q. Well now, this one dated October 11, 1954, that has aircraft magnetos on it, I believe, to Joe Tomley, Deft. Ex. 16, can you tell us what type of magnetos those were, or the number?

A. It says eight each, sir, 8 each magnetos.

Q. Can you tell us what kind?

A. No, sir.

Q. Can't tell whether they had breakers in them or not?

A. No, sir. I would say this, sir. During the period in question there were 82 magnetos sold that could have had new points in them.

Q. You mean according to your records?

A. Yes, sir, that's right. I have our voucher numbers and the date and all right here, sir.

Q. Let me ask you this, Mr. Scruggs, were any scintilla breakers ever sold individually out there?

A. Not to my knowledge.

Q. Will you testify they were not?

A. As far as my knowledge, yes, sir.

Q. Well, are any of them being sold out there now?

A. Not to my knowledge.

* * * * * * * *

Q. Well now, Mr. Scruggs, what is this item I have in my hand, Defendant's Exhibit No. 7?

A. It's an aircraft magneto, sir.

Q. Is that a Bendix scintilla?

A. Yes, sir.

Q. Does it have platinum breaker points in it?

A. Yes, sir. I would like to add, sir, that that is a serviceable item as indicated by the tag.

* * * * * * * *

Q. Well now, I show you another delivery sheet, Mr. Scruggs. This is to C. T. Sales and is dated Feb. 17, 1955 and it has various numbers of items, and then they are followed at the end by "etc." (Deft. Ex. No. 17.) Can you tell us what is included in that "and so forth"?

A. No, sir, I can't, without our records.

Q. And those are the records that you don't have?

A. That's correct, sir.

Q. And the Colonel doesn't have, as you understand it?

A. Yes, sir.

Q. And of course that was during your tenancy as boss?

A. Yes, sir. I might add that I wasn't the boss. I was just a—

Q. I mean you were in charge of disposal?

A. Yes, sir.

Q. Here is one, 900 pounds of aircraft parts, has springs, distributors, and so forth; Feb. 17, 1955. Can you tell us what is included in that and some information about it and what type of springs those were? (Deft. Ex. 18.)

A. No, sir, I can't from this delivery document.

Q. And you have nothing else available from which you can, as I understand it?

A. Not—with the time element we didn't have an opportunity to get in all of these items.

* * * * * * * *

Q. Now to save time, Mr. Scruggs, would your testimony be the same as to all delivery tickets that I might hand you hereafter and ask you to identify what "and so forth" means or what type of magneto it was, or type of motor or spring?

A. I couldn't say that. It may be on a sealed bid sale that the document may indicate the exact number.

Q. Very well. I'll get them here and let you look at them right quick. That will save time. The latest one in here appears to be May 2, 1955. I wish you would look over those. Take just as much time as you desire, sir. Look over those spot bid sale delivery tickets to C & T Sales and tell us whether you can identify the items described in there as "and so forth", or where magnetos are described the kind of magneto, where springs are described what kind of springs, and where motors are described what sort of motors they are.

A. Mr. Miller, these delivery documents here, sir, all refer to spot bid sales and the records are not available here to identify the quantities or the manufacturer of any of the items listed.

Q. Well, can you identify the items as the type of item there; when it says a spring, what kind of spring it was?

A. Not on spot bid sales, sir.

By the Court:

Mr. Clerk, identify it as the next exhibit number and then A, B, etc., down the line.

By the Clerk:

Yes, sir, there are 23 of them and I'll mark them Deft. Ex. 19 thru 19 W.

A. I still have two here, Mr. Miller.

Q. Yes, I'm going to get to those in just a minute, but with respect to all of the others that we have identified as Defendant's Exhibits 19 thru 19-W, 23 of

them I believe the Clerk said, I believe your testimony is the same with respect to them as you have testified before, that you can't identify the number or the type of the item involved?

A. My answer to that, sir, was that I can not from this point here. The records which can identify them as to number, manufacturer, etc., are available at Robins Air Force Base.

Q. When you say available, they haven't been available after a weeks subpoena have they?

A. Sir?

Q. The subpoena was served over a week ago wasn't it?

A. Yes, sir, but it takes considerable time to go back and, as I say, we have such voluminous documents out there that it takes some time for research to—

Q. I understand but when you say it is available, we couldn't recess here for an hour and go get them?

A. No, sir.

Q. Could we for a day?

A. No, sir, I don't think so.

Q. Couldn't do it for a week, could we?

A. No, sir.

Q. You've no idea how long it would take?

A. It would take some three or four weeks or so.

Q. Now let me show you this motor here. Let me ask you has that motor—what I mean by "that motor", I mean one identically like that, were they sold out there at Warner Robins during '54 and '55, that you know of, at the disposal?

A. I have seen some similar to that one.

Q. Well, do you know your nomenclature enough to know that that identical model number has been sold?

A. No, sir. We have some 275,000 items out there and it would be impossible for me to know the number on all of them.

Q. Don't you remember one particular sale, or do you, to Mr. Tomley or C & T Sales where there was a shortage of about 12 of those that you gave him some credit for?

A. No, sir, I don't recall that I have given anybody any credit for anything.

Q. When I say credit I mean an adjustment. Maybe I'm just using the wrong word. Let me see if I can refresh your recollection, please, sir.

* * * * * * * *

Q. What is the number on that motor, first, please, sir?

A. 5069625. I don't know if that's the serial number, or style number, or model number.

Q. See if this is your handwriting on this particular one involving electric motors?

A. Yes, sir, that is correct.

Q. Well, did you sell a hundred and seventy five of them on that one?

A. Yes, sir.

Q. And there was a shortage of 12 and you initialed that it was only 163?

A. No, sir.

Q. Tell us what that means?

* * * * * * * *

Q. Now, Mr. Scruggs, with your memory refreshed if it is, can you tell us whether or not any of these type motors like this one you just had in your hand,

or still have, this black one, were sold prior to May 5, 1955, or May 10, 1955? Can you say positively they were or were not or you just can't say?

A. Well, I can't say definitely, sir, because I don't have the records available. It's possible that Major Workman, in his records, might have this article here.

Q. You mean the records that he has here?

A. Yes, sir.

Q. You are not familiar with those records?

A. Well, not to the extent—without going thru them. I might go thru them and be able to state that, sir.

Q. Well, would the Major be more familiar with them than you are?

A. Well, he made a study of them, which I didn't.

Q. Well, now these two exhibits that we held out of Exhibit 19 thru 19-W, is there any explanation different on those two than on the others?

A. I think, sir, that you have these, the sales on these two delivery documents here subpoenaed, and I believe that they are in those records that you asked Colonel Workman to bring.

Q. That's the only different explanation you give to these two that you haven't given already as to the others?

A. It's possible that the invitation for bid would have the exact items here, sir, I have here on item 317.

Q. Which one is that? The one you have in your hand?

A. Yes, sir, on this one here, where there was 8 (88?) screws and 4 each brackets that were sold on that sale, and we had those items—contained no platinum in either one of those two items, which might be construed as containing platinum.

Q. And you are speaking from your records as to what it contained?

A. I'm speaking from my records right here.

Q. And what record is that?

A. That's the record that we, in reviewing the records out there, found that on that particular sale, 88 (8?) screws, 4 each brackets, which have a similar nomenclature to items that contain platinum. We determined the stock number and went back to our records and determined the stock number and if any of those items contained platinum, and which they did not, sir.

Q. All right, sir. Is that all you have to say on those two?

A. Yes, sir.

Q. Thank you.

Mr. Miller:

The paper the witness is referring to as 317 we will make Defendant's Exhibit No. 20, and the other one Defendant's Exhibit No. 21.

Cross Examination.

By Mr. Evans:

Q. Mr. Scruggs, I believe you say you were in Salvage most of the time that we have involved here, that is most of the time from November 1954 to May 1955?

A. With the exception of 30 days, yes, sir.

Q. And you were in there a short while before that?

A. Yes, sir.

Q. Mr. Scruggs, the testimony in this case is that there was some stealing done from a Class 27 lot at Warner Robins. What is meant by a Class 27 lot?

A. Class 27 lot, sir, is a holding activity where property that has been declared surplus or excess to Government needs is held pending efforts of the Government to secure utilization within the Department of Defense or within other civilian agencies, and also with these countries that are under this NATO policy, and all, make this property available to them.

Q. Just generally, as I understand it, you've got stuff over here in regular stock and they decide that perhaps they are not going to need some of it and they move it to this Class 27, and while it's in that Class 27 they are still making an effort to find uses for it?

A. Yes, sir.

Q. Now at the time it goes into Class 27 is it in Salvage, in your department?

A. No, sir.

Q. In other words, it never has been received into Salvage?

A. That's right.

Q. Now while it's in this Class 27 is there an absolute identification of it by tag and number?

A. It's supposed to be, sir.

Q. And it's there with the original labels on it, tags and numbers and everything?

A. Yes, sir.

Q. Hasn't been reduced to poundage. Now after they have exhausted, there in Class 27, every effort to utilize it in some way, then as I understand it the residue that's left there will actually come into Salvage?

A. Yes, sir, that's correct, sir.

Q. Now, if things like G. E. breaker assemblies, scintilla breaker assemblies and American-Bosch breaker point springs, if those things containing plati-

num, come from Class 27 over into Salvage what happens to them?

A. They come in, sir, on paper work, and they are identified by number, same as all other property that comes into Salvage, comes in on a turn-in document indicating the stock number, how many of them, of each number, there is. When we receive this materiel we have a space allocated and provided out there to store it under lock and key pending the accumulation of a sufficient amount to make shipment to Kelley Air Force Base, San Antonio, Texas for reclamation purposes.

Q. Let's see if I have it straight. When anything comes along that has platinum hooked to it then it takes a separate channel from all the different odds and ends that go under poundage?

A. It it has platinum to the degree that the Air Force desires to save and reclaim. There are some items that come in that have platinum of a quantity that the Air Force does not consider economical to recover.

* * * * * * * *

Q. Let me make it plain, Mr. Scruggs. I'm talking about the period of this indictment, from November 1954 for the next six months, May, 1955. Is there anything that you said that didn't apply to that period?

A. I don't recall, sir.

Q. All right, sir, don't say anything after that period. We just want to get how it was then. Now that stuff with the platinum coming in there, as far as the physical movement goes, when it goes into Salvage off of that Lot 27, I'll ask you does it go straight into another cage out there where it's locked

up, or does it get all mixed up in there with airplane wings and tonnage stuff?

A. No, sir. There's a separate facility provided for that type materiel, sir. I might like to clarify this one point. When I first came to Salvage they were short time there, and the platinum spark plugs were stored outside, but the big majority of them was in nail boxes with steel strapping around them. However, there was a few loose ones, but after I got there, a short time after I got there, why I made provision to provide the necessary protection that the regulations request that they be handled in.

Q. Now, I'll ask you, Mr. Scruggs, none of this platinum stealing in this case is charged to have occurred while it was under your jurisdiction in Salvage, is it?

A. Not so far as I know.

Q. It all happened before it got to you?

A. Yes, sir.

Q. Out there on Lot 27?

A. Yes, sir.

Q. Now if Mr. Tomley wanted to come out there and buy some of that platinum stuff that is nailed up in those boxes, sitting over there in the cage, how would he have to bid on that?

A. He wouldn't be permitted to bid on it, sir.

Q. What do you mean by that?

A. It wouldn't be advertised for sale.

Q. What?

A. It would not be advertised for sale in the first instance.

Q. You mean you don't sell your platinum stuff out there?

A. Not as such, no, sir.

Q. Why don't you?

A. Our regulations prohibit it.

Q. What does your regulation require? Have you got the regulation?

A. Yes, sir, I have it.

Q. What is the date of that regulation?

A. The date of this regulation is 15 October '54.

Q. What does it say?

A. This is out of the Air Force Manual 67-1 Vol. 13, sheet No. 8.

Q. Read us the regulation.

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Q. Are you familiar with these?

A. I'll see if I can locate it, sir. (Looking thru papers with blue ribbons on them.) This one is published 1 July '53, which would be an earlier amendment to the one I had, sir.

Q. All right, sir, read that.

A. The section of this one I have?

Q. The one out of the blue ribbon copy that is substantially the one that you have to go by now.

A. This is Paragraph 33, spark plugs and magneto points. Paragraph (a). "All condemned spark plugs containing platinum wire electrods will be forwarded to Warner Robins Air Materiel Area or San Antonio Air Materiel Area as appropriate, in accordance with the provisions of technical order 00-25-11. All spark plugs containing platinum points which have been conditioned condemned at Warner Robins Air Materiel Area or San Antonio Air Materiel Area will be held pending special disposition instructions from the Commander, Air Materiel Command.

"(b) Condition condemned magneto breaker assemblies containing platinum points will be held pending special instructions from the Commander, Air Materiel Command.

"(c) Quantities of platinum pointed spark plugs and magneto points on hand each month will be shown in Sec. 4, line 2, column b of Air Force Form 488, disposable property report."

Q. Now I'll ask you, sir, under that regulation, whether or not you all separated this platinum bearing materiel?

A. This materiel, sir, is separated before it comes to the salvage yard, and it is so indicated on the turn-in document.

Q. And do you all keep it separated from all this other materiel that runs by the pound?

A. Yes, sir, that's correct.

Q. Now do you deal in platinum by the pound?

A. No, sir, we do not.

Q. Do you have any classification on platinum by the pound?

A. No, sir. Platinum carries an Air Force classification of Number 50, sir.

Q. A special classification all its own?

A. That has no relationship to the sales classification.

Q. I'll ask you about how much would a pound of platinum be worth? Do you have any idea? I mean just roughly.

A. Well, the type of platinum that is contained in breaker assembly or a spark plug, the value fluctuates a little weekly or daily, but the average value of that analysis is $120.00 a troy ounce. Most of that platinum is 99% pure.

Q. You mean it would be worth about $1500 for a pound?

A. I suspect it would be worth more than that, sir.

Q. $120 an ounce.

A. Troy ounce.

Q. How many troy ounces in a pound? I've forgotten. We won't go into that though. You all don't classify that out there by the pound in this salvage operation of yours?

A. No, sir.

Q. All these things that Mr. Miller has been showing you up here, would you say there could be any pounds of platinum in all those thousands of pounds of motors, wing parts, and brake parts? (Handing witness a handful of papers, which the witness proceeded to look thru.) Let me ask you, Mr. Scruggs—

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Q. Are there any exceptions to this platinum rule. For instance, do you occasionally there in your salvage outfit sell a new magneto?

A. Yes, sir, yes, sir, we do.

Q. And that magneto might have some platinum parts in it, might it not?

A. Yes, sir, that's true.

Q. But when you sell one of those magnetos I ask you do you put it under the category of "and so forth"?

A. No, sir.

Q. If you sold it and it showed up on a slip like that would it show so many magnetos or not?

A. Well, now, sir, this is—I might remind you—the delivery document here you have handed me, and this does not in all instances show the exact count, sir.

Q. Yes, sir.

A. But—

Q. What would it do? Would it show magnetos on there?

A. This delivery document?

Q. Yes, sir.

A. It should, yes, sir.

Q. In other words, what I am trying to get to is if it happened to be some big units that had a little platinum in it, that it would be worth more to sell as new units out there, even at salvage, than the platinum would be worth. What I want to know is would those big units show on those slips by something other than the words "and so forth"?

A. Well, sir, in the case of a spot bid sale, sir, which the purpose is to dispose of small generations of materiel, er, in all instances the exact count on that materiel is not recorded, because they are relatively small lots and the Air Force regulations don't require, on your sales document, to list each count. Now in the case of some of these magnetos that have been sold, and other items, er, it's entirely possible that the count would not be indicated at all, sir.

Q. That's on that slip that you give the customer?

A. Yes, sir, and on our sales advertisement also.

Q. Yes, sir. Now, as I understand spot bid sales, they are where you get rid of small lots of stuff?

A. Yes, sir.

Q. And as I understand it you go out there and pile them up out in the open where anybody can look at them?

A. Well, they are not exactly piled up, sir. The materiel is segregated and classified and put on a lot in which all bidders—and we encourage them to inspect the materiel before they place a bid.

Q. They can go there and look at that materiel and you give them a general description of what the materiel is?

A. Yes, sir, the categories of materiel that may be in the lot.

Q. If you had any platinum in there would you put it on there with platinum in it?

A. No, sir, unless it was an item that contained some degree of platinum that wasn't within the regulation, sir. For example, a lot of electronic equipment has a certain degree of platinum in there, points and so forth.

Q. You are talking about electronic equipment now things like radio tubes?

A. Yes, sir.

Q. Tubes of one kind or another?

A. Yes, sir.

Q. And great big switches that have little bitty points of platinum on them at the point of contact?

A. Yes, sir.

Q. In other words you are talking about things to where the bulk content runs high compared to the percentage of platinum?

A. Yes, sir.

Q. Some of that you all can sell?

A. Yes, sir. The regulations state that anything containing less than 10% platinum the reclamation program is not applicable to.

Q. I see. I want to show you an item here, an American-Bosch spring. Do you recognize that thing generally?

A. Yes, sir. That's a part of an aircraft magneto, sir.

Q. I see. Do you know whether that's part SP 5287?

A. I have one in my pocket here, sir, that I'll compare with it.

Q. Looks like it anyway?

A. Yes, sir.

Q. I'll ask you whether or not that little nub up on top there, that contact point, is platinum, or do you know?

A. It contains platinum, yes, sir.

Q. Is this the type of materiel that is not handled by the pound out there, but is processed thru there to ultimately be sent to Texas?

A. Yes, sir. I might add, sir, that we get very little of that type materiel.

Q. Would you ever sell this on a spot sale?

A. Not knowingly, no, sir.

Q. Would you ever sell it on any kind of sale?

A. No, sir.

Q. What happens to it after you all put it under lock and key in your department?

A. It stays there, sir, until we get sufficient accumulation for a shipment, and then we get authority from our headquarters in Dayton, Ohio, for permission to ship it, sir.

Q. Now you've got two or three different kinds of sales out there, haven't you?

A. Yes, sir.

Q. Now this spot sale you are talking about, that's those papers that Mr. Miller has been showing you?

A. He had a couple of papers in there that were the sealed bid type also.

Q. I see. All of the rest of them though were spot sales?

A. That's right.

Q. That's where you segregated a bunch of stuff, tell 'em generally what it is and they can inspect it and buy it?

A. Yes, sir. We have a sale like that every week, sir.

Q. Did you all ever sell, by themselves, several hundred of these magneto parts here with platinum on them in one of those spot sales?

A. Not in a spot sale to my knowledge, sir. We, er, sold a follower assembly—

Q. Well, let's just hold it to what I asked you, sir. Now out there on those spot sales did you ever sell G. E. breaker assemblies, several hundred of them at a time?

A. Yes, sir.

Q. Were they identified at the time you sold them?

A. Yes, sir.

Q. Or were they just put in the "and so forth" category?

A. No, sir. They were put in a wooden box with the top nailed down and a sample nailed on the top of the box.

Q. I see, and on your listing, like these delivery slips that Mr. Miller has shown you, would you have "breaker assemblies" showing on that classification?

A. Yes, sir, and the quantity indicated as to how many of each.

Q. And a breaker assembly doesn't show on there, then there wouldn't be any breaker assemblies in it, would there, sir?

A. That's right, sir.

Q. Now what about scintilla breaker assemblies?

A. There's never been any sold to my knowledge, sir, since I've been there.

Q. In other words the platinum content on breaker assemblies, scintillas, is too high and you couldn't sell them? You would have to run them thru to Texas?

A. Well, that's the determination the Air Force made on that particular one, sir.

Q. After you box all this stuff up, this platinum stuff that you are not going to sell out there at spot bids, I'll ask you where is it shipped to?

A. Kelley Air Force Base, San Antonio, Texas.

Q. I'll ask you whether or not they smelt it?

A. Yes, sir.

Q. Now, Mr. Scruggs, isn't this what your testimony comes down to; that to start with your platinum stuff is as a matter of general policy not sold out there?

A. Yes, sir, that's correct. If it comes within the specifications set forth in this AFM 67 1, sir.

Q. And that there may be some items that are sold out there if the platinum content isn't high enough in proportion to the bulk of the rest of the items, may be sold there?

A. Yes, sir. That's 10%, sir.

Q. And I believe you said there was another exception that might be sold and that was where it was an item like a magneto that the whole value new of the unit depended on some platinum part that was in it and you wouldn't strip the part out just for it, to get the platinum on a big unit like that?

A. That's true sir.

Q. Are there any other exceptions?

A. That's the only one that I can recall, sir, right now. We have electronic materiels and all types of materiel, particularly modern type of instruments of war, and all, that have a lot of critical metals, and we are governed by regulations as to what to save and what not to save, and also they point out the type of materiel that they do want saved and by chemical analysis—

Q. Yes, sir. Now in reviewing those shipping bills that Mr. Miller gave you, I wish you would just take your time and go down thru them one at a time and pick out every one of them that there is a possibility that there might be one of these items in them, G. E. breaker assembly, scintilla breaker assembly, American Bosch breaker springs; just those three platinum items. And I mean by that any possibility at all of it being in there.

A. You mean to include magnetos, sir?

Q. Yes, sir, if it's there and there could be one of those things in there I want you to pull it out. Pull out everything that could possibly have one of these in it. All right, sir, what are these down here that you have put aside?

A. That's the ones that I didn't detect any possibility in.

Q. Now, sir, I'm going to read you these numbers. You come down here. (Standing before the jury box.) Now, Mr. Scruggs, as I understand it, these invoices have been offered, or delivery slips, have been offered by the defendant to account for where he got this merchandise that—

* * * * * * * *

Q. Now, I show you this stack of exhibits here—and incidentally I notice these have all been marked as Government exhibits and they should be Defendant's exhibits; that will have to be changed. I show you Deft. Ex. 19 thru 19-W and ask you to look again carefully thru this stack as we turn it and identify them to the reporter here and see if there is any possibility of any of those platinum parts that I enumerated being in here, in any of these deliveries. Number

19-W, 19-V, 19-U, 19-T, 19-S, 19-R, 19-Q, 19P, 19N, 19-M, L, J, H, G, F, D, B, A 19?

A. The item sir, which says "springs" naturally we could all recognize that in an aircraft there could be thousands of springs, but also the terminology used in magnetos also uses that same terminology, springs, sir. Therefore, I couldn't identify at this point here the particular spring, as to what it was, sir.

Q. Well, I'll ask you this. Could it be this platinum pointed spring here?

* * * * * * * *

A. I couldn't—I—the only way I could answer that is that I could not identify the item, so I therefore couldn't say whether it was or—

* * * * * * * *

Q. I'll ask you this, sir: could this item here be sold under your regulations, according to the interpretation of your regulations out there, under a spot sale such as this one was, so that it would be listed down here on a delivery slip as "springs"?

A. No, sir, not under the regulations.

Q. If it was done somebody would have been doing it erroneously or criminally or something of the kind?

A. Yes, sir.

* * * * * * * *

Q. How about this one, Exhibit No. 17?

A. No, sir.

Q. Exhibit No. 9?

A. Yes, sir, magnetos there, sir.

Q. Put it over there. Exhibit No. 12?

A. No, sir.

Q. Now we come to Exhibit No. 21 here. That Exhibit No. 21, is that for a spot sale?

A. No, sir. That's for a formal sealed type sale, sir.

Q. Now this is one where you can absolutely go back and get a complete detailed identification of all of the property, isn't it?

A. We could get it. I might explain this, sir. In a lot of materiel the majority of the items are listed. Where you may come to a little sack or something like that that has five of this of which the value is 25c, and stuff like that, we don't list that item because we don't want to make the sales invitations this thick, and so forth. We try to list the property which the surplus buyer is interested in.

Q. Yes, sir, but on this Deft. Ex. No. 21, that is an invitation bid, isn't it?

A. Yes, sir.

Q. And he was furnished with a substantially complete list of all the items on it, wasn't he?

A. He should have been. Now I don't have that record with me, sir, and I wouldn't want to make a definite statement unless I saw the record. Col. Workman, I think, has that particular one that you are talking about.

Q. But that further description is available on Ex. 21?

A. Yes, sir.

Q. But you would say from just reading the description on here that 21—

A. In other words, we don't want to go to the typing expense for a delivery document to maybe list four or five pages of stuff.

Q. I see. Well, are you satisfied, sir, that this doesn't carry any of those platinum bearing materiels that I mentioned to you?

A. So far as I know, sir, yes, sir.

Q. That's No. 21. Now No. 20? That's another invitation bid, isn't it?

A. Yes, sir.

Q. Does it carry any of them?

A. As far as I know it does not, sir.

Q. Now these, the ones that you say could possibly—

A. Yes, sir, where they use the terminology of "spring".

Q. I see.

A. This one, this one and here's a magneto, see?

Q. Yes, sir.

A. Here's a spring. There's eight magnetos on there, sir.

Q. What are these?

A. These are the ones where they had plugs underlined, sir, and they had a spark plug here, sir.

Q. Now we haven't got him charged with any spark plugs. If spark plugs is the only reason let's take them out. I'm just asking you about three items now. Those three are G. E. breaker assemblies, scintilla breaker assemblies—

* * * * * * * *

Q. Get back on the stand, please, Mr. Scruggs. Now would you pick out the invoices there that might embrace G. E. breaker assemblies. I'm going to try to get right down to it.

A. I don't see anything in here that would be identifiable as G. E. breaker assemblies, sir. However,

not knowing the specific type of magneto that is involved here it's entirely possible that in these magnetos there could have been a G. E. breaker assembly, sir.

Q. Yes, sir. The only place that they could show, in everything you have in front of you there that he might have bought at spot sale out there, the G. E. breaker assemblies, is possibly there might be some in some magnetos that show in there?

A. Yes, sir, that's correct.

Q. Now, I'll ask you to look in there for scintilla breaker assemblies?

A. My answer, sir, would be the same.

Q. Not any possibility of a scintilla breaker assembly?

A. Except in the case of a magneto, sir.

Q. Well, now, let's look there and see how many magnetos he has bought.

A. We have, sir, here one document that says 30 each, one that says 36 each, and one on sale 5034 which does not indicate a specific number. It's mixed in with other parts. The weight of that shipment is approximately 300 lbs., sir.

Q. Now how many breaker assemblies does a magneto have in it, can it have?

A. It has two, sir.

Q. Now I'll ask you this. When you all sold those magnetos out there at salvage did all of them have platinum in them?

A. I didn't examine them, please, sir, but the magnetos that come from our maintenance department, the points of it, or the assemblies are supposed to be removed. The magnetos that come from our property class which are in serviceable condition, the assemblies remain in the magneto itself, sir.

Q. I see. Now I'll ask you whether or not you were called on to make a study of the total number of magnetos that were sold by the whole Air Base out there from this period of time in November, 1954 to May of 1955?

A. Yes, sir.

Q. Would you give us the benefit of those figures, please, sir?

* * * * * * * * *

Q. Mr. Scruggs, when we recessed for lunch I believe I had just asked you whether or not you have the records on the total number of magnetos that were sold by the whole Air Base out there thru your salvage division between the time in question; that is November, 1954 and May, 1955.

A. Yes, sir, I have records of all that were sold, sir.

Q. How many were sold during that period of time?

A. One hundred and seventy four.

Q That was all magnetos?

A. All magnetos, aircraft magnetos, sir.

Q. Yes, sir. Now how many of those, according to your records, had platinum in them?

A. Our records would not determine, sir, if they all had platinum in them or not, but we take from the source from which they came, sir, which came from the property class, which ones would be serviceable, the same condition as those that were shown previously. It would be 83 out of that that we feel positive would have the platinum points in them, but the balance of them could have been, sir.

Q. Now, I believe you said that each magneto could have as many as two sets of points in it, two sets of breaker assemblies?

A. Yes, sir.

Q. So then the most that could have been would have been something like 350?

A. Yes, sir.

Q. And if your regulations were complied with and your procedure out there it would have been cut to something like 150 wouldn't it?

A. Well—

Q. Based on the 83, I'm talking about.

A. Based on the 82, sir, it's—

Q. 82?

A. Yes, sir.

Q. That would be 164, if there was 82 of them. Well, could there have been scintilla breaker assemblies to the tune of two or three hundred in those magnetos?

A. Of the 82, sir?

Q. Yes, sir.

A. No, sir. The maximum would be two assemblies per magneto.

Q. Now all these magnetos that you sold, the 174 of them, were they all sold to Mr. Tomley, or do you know?

A. No, sir, not according to our records, sir.

Q. But if they were sold to Mr. Tomley he would have sales invoices on them that he could bring in here, wouldn't he?

A. Yes, sir.

Q. Suppose Mr. Tomley had bought 76 magnetos, or say 100 magnetos, if they all had platinum in them you would just double that number of magnetos to determine how many breaker assemblies they had, wouldn't you?

A. Yes, sir, that's true.

Q. Do you, by any chance, have an American Bosch breaker spring there?

A. Yes, sir, I have the assembly complete, sir.

Q. That's it complete?

A. This is a scintilla assembly. I have the Bosch breaker springs, sir. (Reaching in his pocket.)

Q. This is a scintilla breaker assembly?

A. Yes, sir.

Mr. Evans:

I would like to identify this as Govt. Exhibit No. 7, a scintilla breaker assembly. And this I would like to identify as Govt. Ex. No. 8.

Q. Now this Govt. Ex. No. 8, what is that please, sir?

A. That's an American-Bosch breaker spring, sir.

Q. That's number 5287?

A. Yes, sir.

Mr. Evans:

I would like to tender both of these in evidence now, Your Honor, if I may.

By the Court:

Well, what is the point in tendering them one at a time? Nothing has been tendered so far. Wouldn't it be better to wait until the defendant finishes.

Mr. Evans:

Yes, sir, we can.

Q. Now I believe your testimony was as to these two items, the two you just handed us, that in all of these sales delivery records that there's no showing

on those as to these two items except what might appear in the magnetos that were sold?

A. Yes, sir, and also where they underline the word "springs", sir.

Q. In other words, springs might apply to this one?

A. Yes, sir.

Q. Theoretically the word "spring" could cover both of them?

A. Yes, sir.

Q. Is there any word in there at all that could possibly cover this assembly, Govt. Ex. No. 7?

A. I didn't see it, sir. I don't believe so.

Q. Is there any word in there that could cover Govt. Ex. No. 1, which is this G. E. assembly.

A. No, sir.

Q The only word in there that could cover either of these three would be the word "spring" on Govt. Ex. No. 8?

A. Yes, sir.

Q. And I believe you said according to your regulations this spring was not supposed to be in there as a spring?

A. Yes, sir, to be sold as such.

Q. To be sold as such. But according to your regulations this was to go straight into a separate channel?

A. Yes, sir.

Q. From Lot 27 and never become mixed with salvage. Now that word "spring" that you have got there, are there very many different springs on an airplane?

A. Yes, sir, I would say there's quite a few, sir.

Q. Well, according to your regulations could that word "spring" be referring to this Exhibit 8, to items

of that type? I mean just as a matter of common sense?

A. I don't think so, sir. No, sir.

* * * * * * * *

Re-Direct.

By Mr. Miller:

Q. Mr. Scruggs, did you go back of November 1, 1954 in trying to ascertain the number of magnetos that were sold from the Disposal Department out there at Warner Robins?

A. I asked the clerks who got this information, Mr. Miller, to go approximately two weeks before and after.

Q. Well then, you didn't get the information? Some clerk did. Is that correct?

A. Yes, sir, the people in our record section.

Q. Sir?

A. Our record people.

Q. How many people do you have out there working under you?

A. Twenty seven.

Q. You have people working under you that get up the wording that is expressed on these delivery tickets?

A. Yes, sir.

Q. Do you have people under you that place the merchandise on the pallets out there where they are sold, out in the area?

A. Yes, sir.

Q. Do you personally inspect each item yourself?

A. I review the sales, sir, before they are published and after, prior to making awards, sir.

Q. Do you review the merchandise itself or the records of the merchandise?

A. I review the records plus a part of the merchandise. I don't get out and physically inspect every item that might be on sale, sir.

Q. Well now, do you have any records there that could tell us how many magnetos that Joe Tomley bought from Warner Robins say from January 1, 1954 to two weeks prior to November 1, 1954?

A. I have from, er—I have here the sales that he bought between November and May, sir.

Q. I understand that. You have already given us that. I'm asking can you go back of that. Do you have any records to show how many magnetos he bought in '53 and up to November 1, 1954?

A. I don't have them here, sir. We would have them at the Disposal Division.

Q. Who requested you to get the information solely and exclusively from November 1, 1954 to May, 1955?

A. Who requested it, sir?

Q. Yes, sir.

A. I did it on my own initiative, sir.

Q. No one requested it?

A. No, sir.

Q. Why didn't you go back of November 1, 1954?

A. I only went to the period that was in question, sir.

Q. The period in the indictment?

A. Yes, sir, that I was advised that the period covered.

Q. Who advised you of that, sir?

A. Well, I asked the period that was in question. I believe I asked Mr. Powell.

Q. Is that the Federal Bureau of Investigation agent?

A. Yes, sir.

Q. Did he talk with you in the investigation of this case?

A. He has inspected our records, sir, in connection with the case. We have gotten up information for him.

Q. Did you just testify a minute ago the number your records show that Mr. Tomley bought from November 1, 1954 to May of 1955, magnetos?

A. No, sir.

Q. Your records don't disclose that?

A. I didn't say the number, sir.

Q. Well, do your records disclose that? Can you now give us the number?

A. No, sir. We have only three spot bid sales here, sir. Let's see, there's two (looking thru records), there's three lots on the spot bid sales, sir, that contained magnetos that were purchased by C. T. Sales Company.

Q. Do you have any that Joe Tomley himself bought?

A. My record here states it C. T. Sales.

* * * * * * * *

Q. Do the three lots that your records that you have disclosed show how many magnetos C. T. Sales bought during that period?

A. No, sir.

Q. Well, do your records give any information from which you can estimate how many magnetos they bought during that period?

A. I couldn't make a fair estimate, no, sir.

Q. Well, what are you looking at, a spot bid?

A. Yes, sir.

Q. Well, will you read out to us, please, sir, one of those sales and how it is described?

* * * * * * * *

A. The first one is on spot bid sale 55-41, which was on approximately the 1st of May, 1955.

Q. Yes, sir?

A. Item 4182, which states aircraft parts consisting of governors, starters, actuators, magnetos, etc., 750 lbs.

Q. Now what I'm trying to get around to from that—and I think it's material, Your Honor—you have already testified that your records disclose that for this period we are talking about you sold 174 magnetos?

A. Yes, sir.

Q. Are the magnetos that you are reading from, to C. T. Sales, are they included in that 174?

A. Yes, sir.

Q. How many of them are included in the 174?

A. From the records I have, sir, I can't tell.

Q. You don't have the records from which the number 174 was obtained?

A. No, sir.

Q. Then it's not so that those sold to C. T. Sales are in addition to the 174?

A. That's right, sir.

Q. Very well, sir. Now let's look at these just a minute and we are going to move on, Your Honor. These are the ones you have already identified as containing magnetos? The one you are looking at there, Deft. Ex. No. 9, which just says "magnetos" and says 300 lbs. approximately. Can you give us the number of magnetos involved in that sale?

A. No, sir.

Q. Who signed for it and received it down there?
A. Joe Tomley.
Q. That's within the period we are talking about?
A. I can't tell whether that's 21 June 54 or—it's '54. I can't—I wasn't there at the time.
Q. All right, sir, let's look at another one now. How many magnetos were sold to Joe Tomley on that exhibit of Defendant's No. 16?
A. It says "8 each".
Q. All right, turn over until you find another magneto.
A. I might add, sir, that this is dated 10-11-54.
Q. I understand, sir, and the 300 lb. one was in June of '54.
A. Yes, sir.
Q. I understand. Turn to the next one that has magnetos, please.
A. "30 each."
Q. And the date of that one? That's Exhibit 13.
A. That's Aug. 30, 1954.
Q. Very well, sir, find another one. See if you find any others there involving magnetos.
A. I think that's all, sir.
Q. All right, I'll show you a brand new delivery ticket that has not been identified yet and ask you if that discloses magnetos that were sold to Joe Tomley, and if so, how many?
A. This is 22 each, sir.
Q. And the date of that, please, sir.
A. I can't make the date out, sir.
Q. Does it have on there anything about it being paid? That would give you some idea of it.
A. It was paid 14 of September, 1954.

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Mr. Evans:

We'll identify the last one as Deft. Ex. No. 22, delivery slip, or sales slip if you have been calling them that.

Q. Now, Mr. Scruggs, did you on cross examination intend to convey the impression that I got that the platinum in the breakers and in these springs contained 99% pure platinum?

A. I have here, sir, a statement from our technical laboratories at Warner Robins, which shows—

Q. I'm not asking for that. Just a minute please, sir.

* * * * * * * *

Q. I understood you, Mr. Scruggs—I may have misunderstood you—to say on cross examination that these scintilla breaker points and American-Bosch spring points had platinum in them or were made of platinum 99% pure.

A. No, sir.

Q. You didn't say that?

A. I think that was in answer to Mr. Evans' question as to the price of platinum, either your question or Mr. Evans'.

Q. What you were giving him was the price of 99% pure platinum when you quoted some figure on cross examination?

A. Yes, sir, that's correct.

Q. I would like to show you an invitation bid, Mr. Scruggs, and the items marked there in red. I would like to ask you if you are acquainted with that sale and tell us what those items include, or what that item includes.

* * * * * * * *

Q. Look at the item there, Mr. Scruggs, first, you have in your hand, an invitation bid sale of Warner Robins surplus disposal division.

A. Yes, sir.

Q. That item marked in red, what does it offer for sale?

A. "2800 ea. Followers American Bosch 10-20237", sir.

Q. Does that mean 2800 of these Govt. Ex. No. 7?

A. No, sir, that's not an American Bosch there, sir.

Q. All right, sir. Is 10-20237, or whatever number you read there, is that an American Bosch number?

A. Yes, sir.

Q. Are you positive?

A. Wait a minute and I'll verify that, sir.

Q. I think I can help you. Look at the top up there where the bid starts off. See if it doesn't describe it as a scintilla.

A. No, sir. It says, "Magneto parts, consisting of—

Q. What? Scintillas?

A. No, sir. It does down and lists each item in there.

Q. Oh. I thought it had scintilla in there. It does. (Showing it to him.) That ain't it?

A. That's "4100 ea. Distributor Block Bendix Scintilla", part number—

Q. Oh, I see. Tell me whether 10-20237 is American Bosch. I believe—isn't every part number that begins with ten dash, isn't that a Bendix scintilla?

A. Let's see, just a second. The identification on there, sir, as far as the records I have here, 4701—is American Bosch. It's 4701 SP 5287.

Q. That's American Bosch spring now I'm talking about.

A. Yes, sir. The scintilla is a 4704 series, sir.
Q. Go ahead, what follows 4704?
A. We have 10-14447.
Q. Do you have a 10-20237?
A. No, sir, I do not on this.
Q. Don't have that? Very well, sir, that's all.
A. I would like to give one other thing, sir. I have a record here from out—

Mr. Miller:
I'm not asking for that, may it please the Court. I don't know what he's going to say.

By the Court:
If it is in explanation of any answer you have made you can go ahead.

A. This is authority from our headquarters in Dayton, Ohio, which states specifically that this number here 10-20237, the platinum in there is not sufficient for economical recovery, disposal as surplus is authorized, sir.
Q. Very well, sir.
A. That's in explanation of my answer. May I continue? That's the same item.
Q. That's the same item?
A. Yes, sir. Here it is right here, sir.
Q. Give me that number again now.
A. 4704-10-20237.
Q. Well now, that's the same number that's here that is by mistake called American-Bosch, isn't it?
A. Yes, sir, that's the same number.
Q. So this was a mistake here, this American-Bosch?
A. Probably so, sir.

Q. And I believe you say that's the same thing as Govt. Ex. No. 7?

A. No, sir, er, this er—what they have reference here to, sir is this part right here, I believe.

Q. But the Government says you can sell 10-20237?

A. I have a sample of one of those, sir, if you would like to see it, of the type that you have in question there, sir. (Handing it to Counsel.)

Q. May we borrow this one, sir, for the record?

A. It's all right with me.

Mr. Miller:

Let's identify this, please, as Defendant's Exhibit No. 23.

Q. Do you have anything from the government concerning the sale of the counterpart to the part you have just given us, Defendant's Exhibit 23? That's 10-20236; not 20237?

A. No, sir, 20237.

Q. Well, do you know whether you sold any 10-20236 or not?

A. Not to my knowledge, sir.

Q. Do you know whether you have sold more than 2,800 of the 10-20237?

A. Yes, sir.

Q. Could you give us any idea how many?

A. Yes, sir.

Q. How many?

A. We sold some 20,000 to Mr. Thomas.

Q. Is that Mr. Thomas from Sebring, Florida?

A. Yes, sir.

Q. Have you seen him out in the hall?

A. I know Mr. Thomas, yes, sir.

Q. I say have you seen him in the hall since this case began?

A. No discussion about it, sir.
Q. I asked you did you see him with your eyes?
A. Yes, sir.

* * * * * * * *

Mr. Evans:

Let's get this thing identified here with a Government Exhibit number on it. Govt. Ex. No. 9 we are going to call it. I don't think Mr. Miller ever put it in evidence, got it identified. What is this thing, an invitation to bid?

A. Yes, sir, that's correct, sir.

Mr. Evans:

Does that mean Mr. Tomley bought 2800 of those things from out there, this thing that Mr. Miller has got marked in red here?

A. No, sir, it doesn't mean that he did. He had the opportunity to buy.

Mr. Evans:

Now if he bought them he'll have an invoice for them, won't he?

A. Yes, sir.

Mr. Miller:

If he hasn't lost it.

Mr. Evans:

I'll ask you do you or do you not know whether he lost it?

A. Sir, I don't even know if he bought it.

Mr. Miller:
We didn't buy it, Your Honor.

Mr. Evans:
I believe it's stated into the record that he didn't buy it.

Mr. Miller:
No, we didn't buy it.

By the Court:
The evidence shows somebody else bought it, doesn't it?

Mr. Miller:
Yes, sir, Consolidated Aero, or something. The man's in the hall.

Mr. Evans:
That's all.

(Witness excused.)

MR. M. D. STRICKLAND, being called as a witness by the Defendant, and having duly affirmed, testified as follows:

Direct Examination.

By Mr. Miller:
Q. Mr. Strickland, where do you live, sir?
A. Highway 41, about 15 miles.
Q. From Macon?
A. Yes, sir.

Q. In what county?

A. Houston County.

Q. Are you a licensed minister?

A. Yes, sir.

Q. Mr. Strickland, have you ever dealt or do you now deal in army or air corps surplus materiel?

A. Yes, sir, for the last nine years.

Q. Do you engage in it at present to any extent?

A. Well, it's rather limited, but I still am in the business so to speak, yes.

Q. During the period from November, 1954 to May, 1955 did you buy any materiel or items from Warner Robins on spot bid sales?

A. Yes, sir.

Q. When you bid on the sales, and from the information given on the spot bids, can you tell us whether or not, when you were awarded a bid, and you went out there, if you got the items that were described on the spot bid in every instance, whether you got other items, or different items, or just what the situation was.

* * * * * * * *

A. Sometimes you could tell, sometimes you couldn't. When you got it usually it was what it was supposed to be; sometimes it wasn't.

Q. Well now, if you bought from a bid out there of what they call aircraft residue, what would that consist of, or would it be constant as to what it would consist of?

A. No, it wouldn't, because one electronic contract that sold out there started out as electronics and wound up as aircraft.

Q. Well, now, did you ever purchase any spark plugs from out at Warner Robins?

A. Oh, I've bought quite a few thousand of them, but I never purposely bought any, I don't think. I owned, and I think I still own, a good many.

Q. What do you mean, you didn't purchase them purposely? Would you buy a lot and find them in there, or what?

A. Well, they would normally be mixed up with the electronics. I've bought large quantities of electronics and the way the stuff is handled, of course, a lot of things get mixed up in there that aren't in your line of materiel.

Q. Did you ever have any occasion to sell or swap any aircraft motors with or to Joe Tomley here?

A. I remember selling or swapping some to Joe once, or maybe more than once.

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Q. I'll show you an article here that has a tag on it marked Defendant's Exhibit No. 4 and ask you if you sold or delivered any type of motor of that kind to Joe Tomey?

A. I don't know the numbers too well. I have sold him motors that looked like this. I can't verify the number.

Q. Very well, sir. Can you tell us approximately when that was, to the best of your recollection?

A. I would say around the first of last year.

Q. Did you ever swap or sell to him any aircraft spark plugs?

A. Chances are I did, because I only had two or three customers for my aircraft parts and he was one of them. In fact, today when I get something that is aircraft I go to him first to see if he can use it. In fact, I usually just dump it on him in exchange for some electronics.

Q. Were you formerly known as East Coast Radio?

A. Yes, I have been since about 1948 or 1949, I guess.

Q. Well, now when you would deliver, or if you did deliver spark plugs to Mr. Tomley, what would they be in, what sort of container, do you know?

A. Well, I would imagine that a good percentage of them would be in little cartons about this big square. Then each plug would be individually packed in a little tubular carton this size, and there would be maybe 50 or 100 in that, and then I wound up with a lot of them that were just loose, just thrown in the boxes and mixed up.

Q. Can you give any estimate of the number of plugs you sold or swapped to Joe Tomley?

A. No, sir, I couldn't.

Cross Examination.

By Mr. Evans:

Q. Mr. Strickland, you say you are in the airplane parts junk business?

A. Yes, sir.

Q. How long have you been in it?

A. I'm really in the electronics business, although I wind up handling a little bit of everything from time to time. I've been in it around from '46 or '47, just sort of eased into it, I guess.

Q. Is that about the time you got into East Coast Radio?

A. I think I picked that name up in '48 when I moved from Rochelle to Jacksonville.

Q. That a trade name or a corporation?

A. Just a trade name.

Q. You call yourself the East Coast Radio?

A. Yes, sir.

Q That's the way you do your salvage business, under the name of the East Coast Radio?

A. Ordinarily, yes.

Q. Whenever you buy from out there at Warner Robins?

A. Oh, East Coast Radio or East Coast trading, or M. D. Strickland.

Q. I see. About what does your volume run a year that you purchase?

A. You mean amount of value?

Q. Yes, sir.

A. Last year it didn't run so much. Around maybe eight or ten thousand dollars. It has run, I guess thirty or forty or fifty a year.

Q. I see. Now you say you are a minister?

A. Yes, sir.

Q. Are you a minister of the same church that Mr. Bilderback is?

A. No, sir, I'm not. I am of the Southern Baptist Convention.

Q. Southern Baptist?

A. Yes, sir.

Q. You know Mr. Bilderback?

A. I know him. I don't know him very well.

Q. Does he operate kind of like you do, trading with Mr. Tomley?

A. That, I couldn't say. I don't think I have ever seen him at Mr. Tomley's place, so I wouldn't know. And I have never seen Mr. Bilderback's place either.

Q. Did you ever trade any with Mr. Bilderback?

A. No, sir, I don't think so.

Q. Well, I take it what you are interested in out there mostly is electronic materiel?

A. That's right.

Q. Now do you buy magnetos?

A. Well, at one time I bought G. E. turtle-back magnetos. They got rather popular and I had an outlet on them. That's about the only magneto that I ever bought purposely. I have wound up with a lot of different types.

Q. I see. Now did you ever buy any scintilla breaker assemblies?

A. Not as such. I may have owned some. I have owned everything up to an R 2800 engine, which is about a 2000 horse power engine that goes on these large planes.

Q. Yes, sir. Well, let's try to stay down on some of that lesser stuff. This scintilla breaker assembly, how many of those did you buy?

A. I don't know whether I ever purposely bought any.

Q. Well, how many did you accidentally get?

A. I have no idea.

Q. How many did you sell Mr. Tomley?

A. I have no idea.

Q. How many did you trade him?

A. I have no idea. I couldn't say that I did or did not sell him any.

Q. Well, you would know it, wouldn't you?

A. No, sir, I sure wouldn't.

Q Why wouldn't you?

A It's not my line of business and as I said when I buy aircraft stuff I ordinarily find somebody and dump it on them as quickly as I can because—

Q What about American Bosch breaker springs?

A. As such I don't even know them, not by that name.

Q. How about G. E. breaker assemblies?

A. The answer would be the same to all of those because I just don't know one from another. I know a breaker when I see it.

Q. You mean you have sold some stuff to Mr. Tomley but you don't know whether you ever sold any that he's accused of stealing or not?

A. I didn't know he was accused of stealing any.

Q. Well, don't you know Mr. Tomley is being tried up here, Mr. Strickland?

A. I'm well aware of it, sir.

Q. What is he being tried for?

A. I saw it in the paper, but I don't specifically remember.

Q. You have been going around with Mr. Tomley, haven't you?

A. Sir?

Q. You've been going around with Mr. Tomley, haven't you?

A. I don't know what you mean by going around with him. I've seen him occasionally.

Q. You knew about him bring tried here?

A. Yes, sir.

Q. He asked you to come up here and testify for him, didn't he?

A. I don't know whether he asked me or whether I volunteered.

Q. Who to?

A. It would have been to Mr. Tomley.

Q. Well, did you?

A. I don't remember the conversation.

Q. Well, how did you happen to be up here?

A. Because I am needed to testify in this case.

Q. And what are you testifying now? That you sold him some of this stuff that he's accused of stealing?

A. I don't know whether I am or not. I know full well that I sold Mr. Tomley quite a bit of that type stuff.

Q. What type stuff?

A. Of the aircraft stuff. And there's a world of it that I don't know—

Q. Of the stuff that he's accused of stealing?

A. I have no idea, because I have just sold him stuff that I had that I had no use, no particular need for and had no outlet for.

Q. Well, Mr. Tomley buys thousands of dollars worth of stuff from Warner Robins, from you and Mr. Bilderback and most anybody else, doesn't he?

A. I believe he does, yes.

Q. All of the aircraft stuff. There is no contention about that, is there?

A. I don't know whether it's all aircraft or not. He seems to deal in most anything.

Q. Are you familiar with his card? "Buys most anything".

A. Let's see it. I don't believe I've ever seen this, no.

Q. You know Robert E. Lee?

A. From history I know Robert E. Lee.

Q. You've heard of Robert E. Lee? You know what he means by that, don't you?

A. I've heard of Robert E. Lee, yes, sir.

Q. What does he mean by that?

A. I don't know.

Q. Well, could you testify that you sold him any of the materiel that he is charged with stealing? That's all I want to know.

A. If I knew what he was accused of stealing, if I saw it in a pile, I might have some idea whether I had sold him that or something like it.

Q. But you don't even know, when you come up here to testify, what he's accused of stealing?

A. No, I don't.

Q. All you can say is you sold him something or swapped him something?

A. Over a period of time I swapped him a fair amount of stuff.

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Q. Are you up here testifying that you sold Mr. Tomley any of the materiel that he's charged under a conspiracy about?

A. As I told you, I don't know what he's accused of stealing.

Q. Then you wouldn't know what you are up here testifying about, would you?

A. Well, I pretty well know that field and its operations out there. I'm well qualified to testify to that. That's what I thought I was here for.

Q. But you don't know what he's accused of having gotten of the government's property?

A. Not specifically. I've read the papers. I believe there were some breaker assemblies mentioned and I—

Q. Well, Mr. Tomley would know whether or not he bought this stuff from you, wouldn't he?

A. He would know more than I, yes, sir, because when I get electronics from him I know it and he doesn't.

Q. Has Mr. Tomley told you that he bought it from you?

A. I think he mentioned that some of that stuff did come out of what he bought from me.

Q. Which part of it did he mention came out of it?

A. I don't think he mentioned any particular part. I'm not sure.

Q. Now this is a serious thing. Mr. Tomley is up here telling this jury where this stuff came from You say he told you he got part of it from you?

A. And I believe he got part of it from me.

Q. What part?

A. As I said, I don't know what the list includes and if I did I might not know it.

Q. How would you know he got part of it from you if you don't even know what it includes?

A. Didn't you just say—if I may ask a question—if Mr. Tomley didn't ask me or tell me that he got some of it from me?

Q. Yes, sir.

A. Well, if he says he got some from me then I believe he did.

Q. Then you believe Mr. Tomley?

A. I've never caught him in a lie yet.

Q. I see. Did he ever get any of these from you, Exhibit 8?

A. I don't think so, in that size and shape. He might have gotten them attached to other units.

Q. What did you ever sell him that had platinum on it?

A. I don't know that I sold him anything that had platinum on it. I'm not a platinum expert.

Q. You never did buy anything with platinum on it either, did you?

A. Yes, sir, I did.

Q. What?

A. Radio tubes, not much, but I had a few.

Q. You ever buy any of these things that had platinum on it?

A. I never bought them as having platinum on them, never bought them as what they are. If I wound up with them in a pile of stuff, assorted merchandise, I might have.

Q. Did you ever buy this Govt. Exhibit 1 as such?

A. I have owned some of those that looked like that.

Q. How much did your sales to Mr. Tomley amount to?

A. Not much. Three or four hundred dollars a year maybe, five hundred. I don't know.

Q. What kind of invoices did you give him?

A. Just conventional company invoices.

Q. You've got copies of those invoices, I assume?

A. I assume that I have.

Q. You could have brought them up here, couldn't you?

A. I don't know whether I could or not.

Q. If you wanted to testify for Mr. Tomley as to what you sold him, that he was charged with getting under this conspiracy, wouldn't the easiest way to have done it been to have brought your invoices up here, copies of them?

A. From what you are saying here I gather that breaker points and stuff like that is what he is accused of stealing or accepting, and I don't think that I would have ever broken down an invoice to that point. I think I would have just put miscellaneous materiel.

Q. How many could you have sold him of this, if you only sold him three or four hundred dollars worth of stuff a year? This is Govt. Ex. No. 1.

A. That one box? I could have sold him hundreds of those.

Q. Hundreds?

A. I could have. I don't know that I did.

Q. Did you ever buy anything out there except on a spot bid?

A. Spot and invitation, I guess it runs about fifty-fifty.

Q. In the last half of 1954 down thru May of 1955, what did you or what would you estimate your purchases from Warner Robins to have been during that period of time?

A. It's strictly an estimate, but I would say, since I bought little or nothing in '54, that maybe thru May, one or two thousand, maybe three thousand dollars worth.

Q. How many spot bids?

A. At that time I think it was running about half and half, spot bid and invitation. Now it's pretty well boiled down to invitation.

Q. I see. Some of that thousand or two dollars, half of it, you would have had very accurate descriptions on thru invitation bids, wouldn't you?

A. No. Invitations aren't much better described than spot bids, although they appear to be.

Q. You mean an invitation bid like this—

A. Well, they're—

Q. —isn't much better than—

A. They have a longer drawn out list on invitations.

Q. You look at that now and refresh your memory.

A. I pretty well know these sales listings. They have here, for instance, 390 conduit Tite Flex, something, whatever it is, I don't know; but there's a good chance there was 200 of them, there's a good chance there was a thousand, and there's a good chance there was none at all. That was a guide and a little better guide than a spot bid.

Q. You've been testifying from Govt. Ex. No. 9. Now, there is a typical invoice that you get from a spot bid, isn't there, or rather a delivery slip? (Handing him exhibit.)

A. Yes, sir. Aircraft magneto, unused, 22 each. That's not typical.

Q. That's Deft. Ex. No. 22.

A I don't know what significance it has but most of them aren't that well described, where you describe the item and give the quantity.

Q. What do you mean?

A. I mean that most of them where you would buy a like quantity won't have a complete descrption and hardly ever did they have a quantity on there.

Q. You mean of spot bids?

A. Spot, and invitations were just as likely to be off as spots. They took a little more pains with invitations because that was a national sale.

Q. I see. As far as you are concerned there wasn't much difference in spot bids and invitations as far as descriptions were concerned?

A. No. Over a period of years I have bought considerably more off of spot bids than I have invitation.

Q. Do you know of any items that you sold Mr. Tomley that he is accused of having gotten wrongfully from the government? Do you know of any?

A. I can't say I did or didn't sell him breaker points. I would imagine that the law of averages would say that he got some.

Q. Out of your thousand to two thousand dollars total purchased you think—

A. No, mostly what I swapped Mr. Tomley was stuff I bought back before this period.

Q. I see.

A. Because it was pretty well dead stock. I had a lot of spark plugs and magnetos and that type thing that had been picked over and no one had bought it and I just pretty well dumped the rest of it.

Q. Is there a pretty good market on platinum?

A. I never sold a piece of platinum as platinum, although I've sold some radio tubes that were apparently—I think they had about $6 worth of platinum in them, but I wasn't sure whether these had or had not. They must have had because they weren't worth that otherwise.

Q. But if they happened to throw some platinum in with some stuff when you didn't intend to buy it, you wouldn't have any trouble in selling it, would you?

A. I sure wouldn't think so. It's like gold.

Q. And if you saw contact points there and distributor assemblies, you know there's platinum in them, don't you?

A. No.

Q. Sir?

A. Not unless it's written on there. That's the only way I could tell, because, as I say, I'm no authority. I don't know how to test it. I can't tell by looking.

Q. You are a radio man and don't know that contact points, airplane ignitions, have platinum on it?

A. Some evidently do. I have seen them with Plat stamped on them.

Q. If you ran into two or three hundred of those you wouldn't just chunk them in for poundage, would you?

A. I certainly wouldn't think so, not if I knew what they were.

Q. If you even had a suspicion you wouldn't throw them in?

A. Tell you the truth until the last few weeks I never suspected that aircraft parts had platinum on them. I knew that radio tubes did.

Q. I see. That's all. You can come down.

(Witness excused.)

MR. J. C. THOMAS, being called by the Defendant, having been duly sworn, testified as follows:

Direct Examination.

By Mr. Miller:

Q. You are Mr. John C. Thomas?

A. Yes, sir.

Q. Mr. Thomas, where do you live?

A. Sebring, Florida.

Q. What is your vocation? What do you do for a living?

A. I buy and sell aircraft parts.

Q. Do you buy air force surplus?

A. Yes, sir.

Q. How long have you been in that sort of business?

A. Since 1950.

Q. Have you ever bought any aircraft surplus out here at Warner Robins in Macon?

A. Yes, sir.

Q. Numerous times or just occasionally?

A. Well, numerous times I would say.

Q. You buy on spot bid or invitation bid or both?

A. Both.

Q. On your spot bid, when you are buying do you know exactly what you are getting until you get home and open it up and see?

A. Not always, no.

Q. Well, how about on invitation bids?

A. Well, no, you don't. I mean you—sometimes there's so much stuff there that's in boxes that are unopened that you usually buy a lot for some item that you know is in there and just take a chance on the rest of the stuff.

Q. If you are lucky your chance works out, if you are unlukcy it doesn't work out? Is that what you are driving at?

A. Well, it's possible sometimes.

Q. Well now, have you ever bought any breaker assemblies from out at Warner Robins?

A. Not complete assemblies. I've bought half.

Q. Give me the number and the make if you know it.

A. Well, I've bought approximately 21,000 part No. 10-20237.

Q. Twenty one thousand?

A. Yes, sir.

Q. Scintilla—

A. Scintilla follower assemblies.

Q. That number is 10-202637?

A. No. I'll give it again. 10-20237.

Q. You know one when you see it?

A. Yes, sir.

Q. Now I'm handing you Deft. Ex. No. 23, and I ask you if that is what you are talking about that you bought twenty odd thousand of?

A. Yes, sir, it is.

Q. Did you buy that together with a lot of other stuff or did you buy that just like it is, just singly?

A. Well, it was in a very large lot of other materiel.

Q. When did you buy it?

A. October, 1954, I believe is when the invitation came out and they were probably delivered to me in November, 1954.

Q. Do you have any records of that with you?

A. I brought a record of the sale, a copy of the brochure, sir.

* * * * * * * *

Q. Let's see what records you have to fix this date, please, sir. Do you have any that will fix the date of the invitation bid or your purchase, or—

A. Yes, sir, I do.

Mr. Evans:

May it please Your Honor, we want to urge our objection that he's gone far enough to establish the fact that there was some of this item that was sold on invitation bid, and it was conceded by his witness, who, I might say, is also partially our witness, conceded by him up there on the stand. We have no contention to the contrary.

Mr. Miller:

Does the Government concede that 21,000 were sold in October, 1954, to Mr. Thomas?

Mr. Evans:

Yes, sir.

By the Court:

Very well.

Q. Mr. Thomas, were you present at the bid openings when this particular bid we are talking about that you purchased was—

A. Yes, sir, I was.

Q. Well now, when you bid on 'em did the officials out there at Warner Robins know that the breaker assemblies were in the lot? Was there any question about it or any discussion about it?

A. Well, I have no way of knowing whether they knew that they were in the lot prior to the bid opening.

Q. Were they specified as such in the invitation bid? Did it have it written down there that you had 21,000 of these 10-20237s?

A. The number that they had on the bid was just 20237 follower, but I was familiar enough with materiel to know what that was.

Q. And did they have the number of them?

A. Yes, sir. You mean the quantity? Yes, sir.

Q. Did the quantity check out, or did you get more or less?

A. Pretty close.

Q. What did you do with them, that particular item of that lot you purchased, that is of the scintilla followers, the 20237s? As soon as you bought them what did you do with them?

A. Oh, you mean as soon as they were awarded to me officially?

Q. Yes, sir, and you knew you were the owner.

A. Sold them.

Q. Sir?

A. I sold them.

Q. Did you sell them right there or take them with you or where did you put them before you sold them?

A. Well, during the time between the bid opening and the official award, which is usually a week to two weeks, I requested that they be taken off of the yard, out of the salvage yard, and put into the ware-

house and locked up until such time as I could officially pick them up.

Q. Why did you request that?

A. Well, at that time they were outside of the actual salvage area, that is the enclosed, wired in or fenced in area. They were out on the section they call the hard stand, along with a lot of other materiel, and I just thought they would be safer inside.

Q. Have you ever bought any aircraft spark plugs from Warner Robins?

A. Yes, sir.

Q. How many would estimate you bought for the period November 1, 1954 to May 10, 1955, some eight or nine months?

A. Oh, probably 650,000.

Q. Six Hundred and fifty thousand.

Cross Examination.

By Mr. Evans:

Q. Mr. Thomas, do you know anything about this case that we are trying here?

A. Well, sir, I don't know what you mean.

Q. Well, I mean do you know what the charges are in this case?

A. I—no, sir, I do not. I don't know what the charges are. I don't know what the indictment calls for actually.

Q. Were you there and did you see any of this stuff being taken from the Government, any of the materiel the defendant is charged with getting illegally? You know anything about it at all?

A. No, sir.

Q. How many people buy from Warner Robins like you do, do you suppose? Reckon how many buyers there are?

A. Oh, I would have no way of knowing that. It varies with the type of materiel that is up for sale on a particular sale.

Q. Would you say there were several hundred, or several thousand, that buy from time to time?

A. Well, several hundred any way.

Q. Several hundred any way?

A. I would think so.

Q. Would you think that any one of those several hundred would be equally as well qualified as you to come up here and testify in this case?

A. I can't answer that. I don't know.

Q. All you have testified to, as I understand it, is that you got an invitation bid on which you recoginized an offer by Warner Robins out there of 21,000 of this particular part here? Is that right?

A. That's correct.

Q. And that invitation to bid wasn't any secret thing, was it?

A. No, sir.

Q. Was it similer to this, Govt. Ex. No. 9? I mean just generally?

A. Well, yes, sir.

Q. That's what you call an invitation bid?

A. That's correct.

Q. Do you know approximately how many the Government has on its mailing list that it would send these out to?

A. No, sir.

Q. You would say their list would certainly run into the hundreds?

A. I think it would, yes.

Q. Perhaps a thousand?

A. Well, I'm not qualified to say, because I do not know.

Q. Yes, sir. Now, when you got your invitation to bid it wrote it out there in plain language what it was, didn't it?

A. Yes, sir.

Q. And you legitimately went in there and bought and bid 21,000. Now do you know whether Mr. Tomley got that same kind of invitation or not?

A. I have no way of knowing.

Q. Well, just knowing his operations, and knowing that he is a buyer out there, and something of the size of his operations, that close to the field, would you or would you not say that it was probable that he got an invitation, that he was on the mailing list? Or would you rather not say at all?

A. Well, I'm not qualified to say.

Q. I think the question is unfair.

A. There's some probability, of course, that he would get it.

Q. Yes, sir. There's no reason Mr. Tomley couldn't have bid on that, was there, so far as you know, if he wanted to?

A. Not so far as I know.

Q. Now after you bid on them and got them, then did you keep them intact until you disposed of them?

A. No.

Q. What did you do with them?

A. I broke the points off and sold them as platinum.

Q. You knew they were platinum, didn't you?

A. Yes, sir.

Q. Everybody in the business would know that they were platinum, wouldn't they?

A. I'm not qualified to say that.

Q. I see. But you broke the points off and sold them. Who did you sell them to?

A. Well, I had rather not answer that.
Q. Was it Mr. Tomley?
A. It was not.
Q. Was it someone buying for Mr. Tomley?
A. No.
Q. Was it Mr. Bilderback?
A. No.
Q. I'm not trying to embarrass you, sir, but I anticipate that part of his defense will be that Mr. Tomley got some of these particular items from you—

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(Witness excused.)

MR. DONALD B. RITTS, being called by the Defendant, and having been duly sworn, testified as follows:

Direct Examination.

By Mr. Miller:
Q. Your full name, please, sir?
A. Donald B. Ritts.
Q. Where is your home?
A. Rochester, New York.
Q. Did you come down here to appear in Court under a subpoena?
A. I did.
Q. Who subpoenaed you, the Government or the Defendant?
A. Both.

* * * * * * * *

Q. Mr. Ritts, what is your vocation up in Rochester? What's your job and who do you work for?

A. I am president of Aero Industries, Inc. We specialize in ignition parts for aricraft magnetos.

Q. How long have you been in the business that you just mentioned, specializing in aircraft magneto parts, or whatever you said?

A. Since I came out of the Army in 1946.

Q. Do you deal in breaker assemblies, ponts? Talking about aircraft magneto breakers?

A. Specifically, scintilla, American Bosch, magneto points and breaker assemblies.

Q. I'll show you an invitation bid here from Warner Robins and ask you if your Company or you purchased 2800, or whatever number it is there, scintilla breaker assemblies?

Mr. Evans:
May I see that?

Mr. Miller:
Govt. Ex. 9.

Mr. Evans:
May I ask a question of Defendant's counsel? Is this the same one you were showing the man from Florida?

Mr. Miller:
No. The man from Florida, you know, didn't have his records. He's the one that testified he bought 21,000 in October. This is the one that Mr. Scruggs finally admitted that were sold from Warner Robins, and this is the one, you know, while Mr. Scruggs was on the stand you put in evidence here as Govt. Ex. No. 9.

Mr. Evans:

May it please Your Honor, we would like to object to any showing as to any indiscriminate sales from Warner Robins to different purchasers until such time as Mr. Millér states in his place that his client claims it was from that sale that he obtained some of the stuff that he is charged with having gotten illegally. In other words, Mr. Miller can come in here, we concede, with a hundred thousand sales that have been made from Warner Robins, but until such time as he shows that it had something to do with his client's defense it's just like if you stole something from Sears or Western Atuo and you brought in all of the customers that have bought something from that store. It wouldn't have anything to do with it.

By the Court:

What is the materiality of that, Mr. Miller, tell me. Maybe I ought to say tell me again. We've had a witness on the stand now and I let him testify to that, and when he says "no, I didn't sell any of it to the defendant", and you admitted that you didn't claim the defendant got any of it, how is that material?

Mr. Miller:

It's material, may it please Your Honor, to show that the breakers were being sold by Warner Robins. And I expect by this gentlemen to show that they are being sold by others, like I mentioned while ago that I could show they were sold by some outfit in New York, to show the general availability, to show that Mr. Tomley could have acquired them not only from Warner Robins but from other places, to show the right and ability of Mr. Roberts, from whom we

have stated he got some, to acquire them, to show that they were available for acquisition.

By the Court:
Do you have any contention that the defendant bought any from this witness or this company?

Mr. Miller:
No, sir.

By the Court:
Mr. District Attorney, are you willing to concede that these items are of value and are available on the market at Warner Robins and elsewhere?

Mr. Evans:
Yes, sir.

By the Court:
Then do we need to go any further with it?

Mr. Miller:
No, sir.

By the Court:
Well, maybe I've saved some time. Go ahead with something else.

Q. Turn the paper over there, Mr. Ritts, please, sir, and I'll ask you if you bought another item there on that bid sale which is Govt. Ex. No. 9.
A. Yes, sir.
Q. Did you?
A. Will you state your initial question, something about me or my company—

Q. Well, when I say you of course I am referring to your company.

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Q. How about it, Mr. Ritts?

A. Contact follower.

Q. Is it called on that sheet American-Bosch?

A. Yes, sir, gives American-Bosch.

Q. Is that in error?

A. It's definitely in error. All scintilla part numbers are preceded by ten dash.

Q. And as a matter of fact were they scintillas?

A. They were scintillas but designated as Bosch.

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Q. What is that item we are now talking about, Mr. Ritts, and how many does the invitation bid, in numbers or weight, call for?

A. I would like to make one correction. I nor my Company, that I work for, did not bid or buy in this lot of materiel. I am restricted from buying materiel of this type due to a business which I sold a few years ago, a five year restriction clause.

Q. A restriction in a contract?

A. That's right. However, my brother in law, who operates Air Supplies Company, bid on this materiel and I am extremely familiar with it because I helped him inventory the items. I think the item you are asking about is an NT-5235, which is a nut which fastens on the end of the magneto, and the Government acquisition cost is 39c each. They have 14,000 pieces listed on the brochure. There are now 12½ thousand pieces in stock, and he scrapped 3,000 pounds of

the same item, which I would say would roughly be 250,000 pieces.

Q. In excess—

A. In excess of the amount advertised.

Mr. Evans:

Now I move to exclude that because that is just a plain old bunch of nuts. It couldn't possibly have anything to do with the platinum pointed parts.

Mr. Miller:

I say if they make a 250,000 unit error in nuts they can at least make a 10,000 unit error in breakers, for the jury's consideration.

Mr. Evans:

We still say we are not trying the operations at Warner Robins.

By the Court:

That is correct. I have stated to the jury the limited purpose for which this admitted, and if the defendant insists upon it as a part of his defense I'll let it in.

Q. Mr. Ritts, I'm going to show you a few items here that have been introduced in evidence. The first one is Deft. Ex. No. 1. Can you look at that and tell us what it is?

A. Scintilla breaker assembly 10-28983Y.

Q. That's not a 10-20236 or 20237?

A. No, sir.

Q. First let me ask you, does that have platinum points to that breaker?

A. It has the government's name on it, or the government specifications embodied in the points, indi-

cating it has platinum, and also the manufacturer of the piece.

Q. I'll hand you Govt. Ex. No. 7 and ask you what that is?

A. Part No. 10-214710, superseded by 10-56524 and 56557. It's also platinum pointed, and I'm certain that it has the manufacturer's code. (Looking at it thru microscope.) The coding, I presume, was made necessary so that the Government inspectors at the time of the manufacture, could pull one from the assembly line to determine whether the right amount of ruthenium and iridium was combined with pure platinum.

Q. Now these breaker assemblies we have been talking about, there has been some loose language about platinum points. Are the points pure platinum, or just roughly what percentage on the average are they?

A. During the war the Government prescribed a mixture of approximately 25% ruthenium and 75% pure platinum. The ruthenium gave it a hardening factor. Pure platinum is normally soft. When a point was designated as ruthenium—we'll take the three prime manufacturers, H. A. Wilson & Company, Baker & Company, and B. R. Mallory—you would see on the lip of the point such wording as Wilco 6, which indicated that the point was made of ruthenium platinum. If it was spelled aeralloy it meant it was made of iridium platinum. That was the Wilson Company. Baker designted it by B and O. B is iridium platinum and O is ruthenium. Mallory designated theirs M for iridium and MR for ruthenium. Since the war the Government has designated that all points be made of iridium platinum, which is 75% platinum and 25% iridium.

Q. For the record, this breaker identified as Deft. Ex. No. 1, is that either a scintilla 10-20236 or 10-20237?

A. Neither one.

Q. All right, I'll hand you now a spring identified as Deft. Ex. No. 2, and for the record I'll ask you whether or not that is an American-Bosch SP 5287?

A. No, sir. It's a 10-2977.

Q. I show you Govt. Ex. No. 1 and ask you what that is?

A. That's a General Electric breaker, but I state initially that I handled American-Bosch and scintilla breaker assembly points, not General Electric.

Q. Now I'll let you look at a box, Mr. Ritts, that is identified as Deft. Ex. No. 6 and ask you to tell me if you can, sir, what it appears all of those gadgets are in that box?

A. They are breaker assemblies.

Q. Can you pick one up and tell me what make and number?

A. This is a scintilla 214710, a 23491—beg pardon—220454. They are all made along the same lines. 10-28983Y. They are all used.

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Q. I show you Govt. Ex. No. 4 and ask you what that is?

A. It's a 10-20236, platinum pointed.

Q. Scintilla?

A. Yes, sir.

Q. And finally, sir, this one which I hand you, which is Deft. Ex. No. 23, what are those?

A. 10-20237.

Q. Scintilla?

A. Yes, sir.

Q. I'll now ask you to look at a paper I am identifying here as Deft. Ex. No. 24, and tell me what is that a list of, as it appears to you from looking at it?

A. Almost a hundred percent platinum plugs.

Q. Is that platinum aircraft plugs?

A. That's correct.

Q. How many are there on there that are platinum plugs, please, sir? Count them for us.

A. Roughly 27.

Q. Twenty seven?

A. Correct, 27.

Q. Have you bought and sold plugs that you see listed there, the 27, during your business experience?

A. Many times.

Q. Are plugs a part of your business?

A. Definitely.

Mr. Evans:

Your Honor, we'll admit he's a plug expert.

Mr. Miller:

You'll admit he's a breaker expert too, won't you?

Mr. Evans:

Yes, sir.

Mr. Miller:

Before we get thru he's going to be a platinum expert too.

Mr. Evans:

Seriously, we admit all of that in the interest of time, Your Honor. We admit he's an expert in his field, dealing in ignition parts for air planes.

By the Court:

Very well.

Q. I hand you another paper here, Mr. Ritts, identified as Deft. Ex. No. 25, and ask you what that is a list of, sir.

A. It's a list of Bosch and scintilla breaker points, breaker brackets and complete breaker assemblies.

Q. Are they listed—

* * * * * * * *

Q. Are any or all of the springs, breakers and assemblies on there, do they have platinum points, or how many of them do?

A. 23 out of the 24 I can identify. There are several here which were made for armed services requirements only. They are not used commercially.

Q. You have identified for us, I believe, sir, a 10-20236. Tell us, what quantity of platinum does a point on a 10-20236 have?

A. That particular point, approximately .006 ounces and it takes roughly 190 pieces to equal 1 ounce.

Q. All right, sir. Now the 10-20237, the counterpart to the 36?

A. Same weight factor.

Q. Now 10-2977?

A. Government standard, point 0123 ounces minimum; maximum point 013 ounces, roughly 88 pieces to an ounce.

Q. Have you seen in the Court room today a 10-2977?

A. I have.

Q. Now BK, what does that mean, American Bosch?

A. American Bosch precedes all their components by alphabetical letters, BK for bracket and SP for springs.

Q. BK 5262, the platinum content or weight of that?

A. Roughly—not roughly—the same. I can give you a government brochure which indicates the amount of platinum which we recently purchased from the Oakland Naval Base, roughly 13,000 pieces, meaning the weight factor is the same point.

Q. Have you seen one of those in the Court room today?

A. I don't believe I have seen a bracket.

Q. How about a 10-21417?

A. I had one of those in my hand.

Q. And what is the platinum content of that?

A. Well, it has two points so it would be double the amount which I gave on the single point.

Q. Well, now, Mr. Ritts, have you bought, other than this one item that we have been talking about, or these two items, have you for your company or for yourself, or some other person, bought from Warner Robins items other than the two we have discussed on one sheet here?

A. Have we bought, from Warner Robins?

Q. Yes, sir, disposal area?

A. No, we have not.

Q. Have you, thru an agent or person whom you deal with, bought from Warner Robins?

A. Yes, I have.

Q. Are you on the mailing list of Warner Robins to get spot bid sales or invitation bid sales?

A. Our Company is not, no.

Q. Well, do you ever see them?

A. Occasionally we hear about them. That's why we maintain a man in this area, because we find that we can not abide by the brochures which are mailed from the Warner Robins Air Force Base.

Q. Why can't you abide by the brochures and have to have a man in this area?

A. Well, they are inaccurate.

Q. Do you maintain a man in any other area?

A. No, we do not.

Q. Because of the inaccuracies of the records?

A. We do not.

Q. Do you buy from any other installations besides Warner Robins, surplus materiel?

A. We bid on materiel at all depots where the materiel is of interest to us.

Q. Well, now, are you referring, when you say brochures, to what I am calling the invitation bid, sir?

A. That's correct.

Q. And you say they are inaccurate. Can you give us to what extent and about what you mean by saying they are inaccurate?

A. Well, I think I pointed that out in the exhibit No. 8, I believe.

Q. Nine, I think.

A. Nine, on the sale of December, 1955, where we reputedly purchased 14,000 pieces of nuts and received, I would say, roughly, 250 to 300,000. But I would like to go on record as indicating that it is not always favorable.

Q. That's what I was about to say. You don't complain too much when they ship you more than you think you are going to get?

A. That's correct.

Q. You have a man in this area constantly to buy from Warner Robins?

A. He's not on the pay roll, but our certified checks are made to him and he in turn—they are made to him including a 10% commission, and he in turn buys the materiel with the money we present him with.

* * * * * * * *

Q. Mr. Ritts, do you know anything concerning the acquisition by you or your company of some scintilla parts from Joseph Tomley on or about January 20, 1955?

A. What type materiel?

Q. Well, it was scintilla breakers of some nature, or followers, or breaker springs.

A. I think we have photostats of all of the procurements we made from Joe Tomley, in your hands. As to the specific item and the date, I know nothing of that unless I look at the records.

Q. Have you got the original records?

A. I have.

Q. Well, let's see if you can find them. What I'm speaking about is January 20, 1955, is the date in the indictment, and it says that Joe Tomley shipped to Consolidated Aircraft Supply Company 2,000 scintilla breaker assemblies.

A. If I recall correctly, the item you are referring to is a 10-20236.

Q. The indictment further identifies 2000 scintilla breaker assemblies as one thousand having a manufacturer's model number, to-wit: 10-20236, and the other one thousand of said property having a manufacturer's model number of 10-20237. Now do you have before you what records you do have concern-

ing and identifying that sale? And I'll ask you what the quantity was and what the item was, what type of item?

A. I put all of the paper pertaining to that procurement together with all these papers indicating the amount and the quantity. I believe you have those, and for me to go thru my records here and pull out that particular item, I think, is rather a hasty thing to do.

Q. Well, I have some photostats.

A. Is that the one you refer to, $651.85.

Q. That's the one I think it is. Well, independent of your records, can you tell us what the shipment consisted of?

A. At the time of the investigation, or when the investigating officer came into our office we showed him the check and the bill of lading we believed to be pertaining to that shipment, along with our sales record of that item. As to the specific quantity, it was indicated on our invoice. So, er, as to the exact quantity I'm not at this time able to determine.

Q. Well, can you tell us what the item was?

A. It was a 10-20236.

Q. Are you positive there was no 10-20237?

A. Well, if they had wanted a copy of our invoice indicating what the item was I would have brought it with me, but for me to say I'm positive, I would be afraid to make such a statement.

Q. All right. Have you seen the invoice? I'll ask you if this is a copy of it?

A. That could very well be, because I am not Consolidated Aircraft myself. I am Aero Industries, Inc., which in turn procured this materiel from Consolidated.

Q. Well, now, did the FBI agent come in your office on an investigation?

A. He did.

Q. Did you turn over to him all records he requested?

A. I sat beside him while we went thru our records. Incidentally it's the third time the FBI has been in our business, in our office on materiel out of the Macon depot.

Q. Well, for this shipment did you issue a draft in the amount of $651.85? That is, did Aero Industries, Inc.?

A. We did, our check No. 1284.

Q. Mr. Ritts, I hand you here several papers clipped together and identified as Defendant's Exhibit No. 26, and ask you if you can identify the transaction involved in that invoice and check?

A. That's our check all right. There again the invoice is made to Consolidated Aircraft. I believe this —you want the type of materiel it covers?

Q. Yes, sir.

A. American Bosch SP5287.

Q. Does the check and the amount of the invoice correspond?

A. Yes, sir.

Q. All right, I'll show you Deft. Ex. No. 27, and ask you to tell us what that invoice and check represent?

A. Presumably used spark plugs.

Q. Sold by whom to whom?

A. Joseph Tomley to Consolidated Aircraft.

Q. And that's true as to this one we just looked at, No. 26?

A. That's right.

Q. All right, sir.

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Q. I show you Deft. Ex. No. 28, Mr. Ritts, and ask you what that invoice and check cover?

A. Used spark plugs.

Q. Sold by whom to whom?

A. Joseph Tomley to Airco.

Q. All right, sir, and deft. Ex. No. 29, what does that invoice and check cover?

A. The 10-20236 bracket or contact assembly.

Q. And that's from Tomley to Consolidated?

A. That's right.

Cross Examination.

By Mr. Evans:

Q. Mr. Ritts, the fact that the FBI has been in your office three times about Warner Robins might indicate somebody was trying to do something about the condition down here, might it not?

A. I should think so. The first time was during the Korean War pertaining to a piece of aircraft equipment that was found on a communist ship, and our agent here had handled some aircraft electronics and the supply officer at the Field said that the type of equipment found on the ship was not sold at the Macon air depot.

Q. Yes, sir. Would you say that there has been some lax operations out there?

A. Most specifically because they could have gone to the FCC and found out every type of communication, piece of communication used in every commercial aircraft in this country.

Q. Could that have been due to stealing from out there?

A. Well, not very well. Not if, er—not when they found literally hundreds of ships equipped with that particular type of unit.

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Q. Let's just go down the list, Mr. Ritts. We have to get along with this case. I'll ask you if on December 20, 1954 you had occasion, thru Consolidated Aircraft or Airco, whichever it was, to buy 754 American Bosch breaker point springs from Mr. Tomley?

A. We did. As to the quantity and as to the date, I do not know.

Q. Well, you have been subpoenaed to bring your records down here have you not, sir?

A. I have the records, sir.

Q. All right, then look in there and let's be sure of the date.

A. I've already looked. We assumed at the time of the investigation that the bill of lading was to be attached to that shipment. Unfortunately 754 breaker springs would comprise a very small package and could have been sent parcel post, since we agreed as to the quantity and the price paid. I think that covers it practically a hundred percent.

Q. Yes, sir. Did you at that time and did your records disclose that those breaker points were sent in by Eastern Air Lines?

A. May I repeat, Mr. Evans—

Q. I wish you would look at that again.

A. I'm looking at Eastern Airlines bill of lading, and that's one reason why I contend that perhaps the bill of lading as attached to this shipment may not cover those specific points because we have a—

Q. At the time you talked to the FBI you told them it came in by Eastern Airlines, didn't you?

A. Beg pardon?

Q. At the time the FBI was in your office looking over these records—

A. We assumed that it was part of this shipment, but if you will note on that, if you have a copy, that the weight factor is 60 lbs., and I would dispute that 754 springs weigh 60 lbs.

Q. I see. He sent a 60 pound shipment by Eastern Air Lines?

A. There's no question about that, sir.

Q. Yes, sir.

A. It could have weighed 60 lbs. if they were in a wooden box. We paid him for 754 pieces, which I think amounts to a dollar and fifteen cents each.

Q. Yes, sir. Now I'll ask you, sir, how did you transmit the payment to him?

A. On every shipment?

Q. No, on this particular shipment.

A. On this particular shipment Tomley was paid $867.00 by Western Union because he requested cash.

Q. By Western Union Telegraph?

A. That's right.

Q. How did he sell you those materiels, was it by correspondence or by telephone.

A. I believe I brought out, Mr. Evans, that Mr. Tomley's initial contact with us was thru Consolidated Aircraft, who became merely the agent involved and we in turn paid them a commission for the account.

Q. Did you or did you not state to the FBI that his contact with you on the sale was by telephone, long distance telephone?

A. I stated that the initial contract was by Consolidated. I have talked to Mr. Tomley numerous times by telephone.

Q. Well, on this particular transaction did he offer them to you by mail or by telephone?

A. Aero Industries has no record of this offer on paper.

Q. Well, I'm just asking you just a common sense question, Mr. Ritts, and—

A. Well, if we have records of this particular procurement on paper we have not located the correspondence, so I would say that it was done by phone or by Consolidated to us.

Q. Yes, sir, and do you know who the individual was that talked to Mr. Tomley to make this purchase from him?

A. Do I know?

Q. Yes, sir.

A. It could very well be me, if it was a telephone call.

Q. All I'm asking is, was it?

A. Well, Mr. Evans, according to our Western Union receipt and my check and the Company's check it was on December 20, 1954 and I certainly wouldn't like to say whether I did or did not. My memory is not that fine. I'll admit that we have conversed with Mr. Tomley numerous times by telephone.

Q. As a matter of fact you issued your personal check for that, didn't you?

A. Thank you, Mr. Evans. My personal check was issued to cover this shipment and the cash taken to Western Union because the corporation's check at that particular time were being printed by our bank, so we have a check upon which I wrote out of my personal account for the procurement of the merchan-

dise, and we can substantiate the fact that our checks were being printed, and the corporation then reimbursed me on December 21 for the amount which I had paid to Mr. Tomley.

Q. Well, I'm not implying anything, of course,—

A. Well, I'm explaining why my personal check was issued.

Q. —except the fact that you, if you used your personal check it looks like it would indicate that you were thoroughly familiar with the transaction. How much business up to that time had you done with Mr. Tomley?

A. I believe that was our first piece of business.

Q. Well, now wouldn't you remember—

A. No, sir, I would not.

Q. You wouldn't? You wouldn't remember whether you had contacted him originally by—

A. I never contacted Mr. Tomley, initially.

Q. Now could you tell us how many platinum pointed spark plugs, or what quantity, were shipped in there by Mr. Tomley by Eastern Air Lines on December 20, 1954?

A. December 20?

Q. Yes, sir. Same day the breaker point springs came in?

A. May I have the check which the purchase covers, Mr. Evans?

Q. The check?

A. Well, if I purchased plugs I must have paid for them. As to the date, Dec. 20, I can not determine how many plugs until I see the amount of money we paid.

Q. Well, I haven't got your check.

A. Oh, I thought you were equipped with photostats.

Q. No.

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A. I brought all of the records which the FBI were given photostats. I presumed that was all I was to bring.

Q. You were given a subpoena for all letters, records, checks or documents relating to purchases by Consolidated Aircraft Supply Company from Joseph Tomley, and it described, Dec. 20, 1954, used aircraft plugs, shipped by American Airlines from Macon, Georgia, $528.06.

A. We have a check for that amount, Mr. Evans. It certainly was paid for something.

Q. Now I'll ask you if on January 20, 1955 you bought 2000 scintilla breaker assemblies having platinum points from him by Eastern Airlines, shipped by Eastern Airlines?

A. We have a document in the amount of $651.85.

Q. That covers roughly—

A. Covers two thousand 10-20236s.

Q. Now I'll ask you whether on January 27 you bought from them 150 pounds of aircraft spark plugs with platinum points shipped by Roadway Express? I think your check on that will be $400.00.

A. That's right.

Q. And then 150 pounds of spark plugs shipped by Roadway Express approximately February 16?

A. Feb. 16 is right.

Q. $700.00. And then some 200 pounds of aircraft spark plugs with platinum points shipped approximately on Feb. 25, 1955, for $700.00?

A. We have a receipt February 25. Our amount is $473.00.

Q. I see. Now I'll ask you, sir, do you know where Mr. Tomley was obtaining this property?

A. No, sir, I do not.

Q. Do you know whether he was getting any of it from a gentleman by the name of Wright?

A. I do not, sir.

Q. In your business there, Mr. Ritts, can you show invoices of purchase for whatever you buy in connection with your business operations?

A. One hundred per cent, sir.

Q. Show where you get it. Is that true if you get it from the Government?

A. (Looking in brief case.) On October 28, 1955, total purchase from the Oakland Naval Supply Depot, Oakland, California, $15,268.32.

Q. Now, Mr. Ritts, what I am saying to you is that you are an operator in Governmental surplus, and I'm just asking you if in your business you can show the place from which you acquired the different items that you have in your inventory?

A. Mr. Evans, we procure the majority of our new materiel from the Federal Government. We procure used equipment from every major and local air line in the United States, including points and spark plugs.

Q. Yes, sir, and your records will show where you got it from?

A. Our records will show every penny that we have expended.

Q. Yes, sir. Did you ever sell Mr. Tomley any materiels?

A. No, sir.

Q. You know where Mr. Tomley might have bought some of these materiels?

A. No, sir, I do not.

Q. If you had bought them and sold them to Mr. Tomley you could tell where you had bought them from, couldn't you?

A. If they were points and spark plugs, I believe I could, sir, yes, sir.

Q. All right. There's no question about you having bought this stuff from Mr. Tomley is there?

A. None whatsoever.

Q. And you don't know anything at all about where he got it from?

A. No, sir.

Re-Direct.

By Mr. Miller:

Q. The question was just asked you by Mr. Evans, did you know where Mr. Tomley might have gotten some of this merchandise he shipped to you. Mr. Tomley was not your only source of this type merchandise?

A. No, sir.

Q. Was there any reason why he could not have acquired some from sources, other than himself, that you or your company acquired it from?

A. There are hundreds of depots throughout the United States who sell and dispose of this type of materiel.

Q. You yourself acquired some from Warner Robins I believe? Scintilla breaker followers? Your company?

A. I stand corrected, or you do. My brother-in-law who operates Aero Supplies.

Q. Your brother-in-law's company or trade name or whatever it is. That's all.

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(Resumed 11:15, May 9, 1956.)

By the Court:

Members of the Jury, as the District Attorney stated at the outset of this case, you are not concerned with Counts VIII and IX in the indictment because they relate only to Andrew Jackson Wright. Is that correct, Mr. District Attorney?

Mr. Evans:

Yes, sir.

By the Court:

And since then Counts IV, V, VI and VII have been eliminated, so now you are concerned with only Count I, the conspiracy count, and Counts II and III, which charge substantive offenses. You may proceed, Mr. Miller.

MR. HUGH GALBRAITH, being called by the Defendant, and having been duly sworn, testified as follows:

Direct Examination.

By Mr. Miller:

Q. You are Mr. Hugh Gailbraith?

A. That's right, sir.

Q. Speak out loud now, please, sir. Mr. Galbraith, are you an employee of Warner Robins Air Materiel Area?

A. Yes, sir.

Q. Back during 1954, well, let's say from November of 1954 to around about May of 1955, were you an employee of Warner Robins Air Materiel Area in the surplus disposal division?

A. Yes, sir.

Q. And at that time did you have any connection or work to do the disposal of surplus items from the disposal property?

A. I was foreman of the property disposal area at that time.

Q. Well, now, during that period I'll show you Deft. Ex. No. 4 and ask you if during that period there was sold from your surplus disposal at Warner Robins any electric motors that looked like or similar to the one that you have in your hand there, to the best of your recollection?

A. Yes, sir, I think we have had several of those on sale.

Mr. Evans:

May it please Your Honor, we concede that they were selling that kind of motors out there.

Mr. Miller:

I didn't know the Government had conceded that this type of motor, Deft. Ex. No. 4 and Govt. Ex. No. 6, were being sold at disposal sale at Warner Robins Air Materiel Area during the period of the indictment. If that is conceded I'll withdraw from that.

Mr. Evans:
Yes, sir, we do.

By the Court:
Very well.

Q. During that same period, Mr. Galbraith, while you were foreman out there were spark plugs, aircraft spark plugs sold?

A. We sold spark plugs out there, common ordinary spark plugs like an S 37.

Q. You did sell spark plugs of a nature?

A. Yes, sir.

Q. All right, up to about May of 1955 did you have a list of what was called out there restricted spark plugs; that is, spark plugs that were not supposed to have been sold as surplus?

A. Yes, sir, we had a list under our classification in the department listed as D 7.

Q. Speak out louder, please, sir, so everybody can hear you.

A. D 7, that was our classification in Property Disposal, as platinum pointed spark plugs.

Q. All right, sir. After about May 1 was that list added to, additional numbers given, platinum pointed spark plugs that you were not supposed to sell?

A. As to the eract date, I do not remember right now, but right along there some place in the spring there was a number of platinum spark plugs came in which we did not have on our list, that we did not know existed—

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Q. Up until May 1, 1955, Mr. Galbraith, about that date—well, let's put it this way; subsequent to May 1, 1955, or around about the Spring of 1955, after that time, were there additional types of spark plugs that you were supposed not to sell that you had not been previously advised that you were not supposed to sell?

* * * * * * * *

Q. Well now, Mr. Galbraith, sometime in the Spring of 1955 were instructions received by you that thereafter you were not to sell a certain type of platinum pointed spark plug that you had not been instructed not to sell prior to that? In other words, were additional plugs added to the number that you were not supposed to sell?

A. The way this all came about, it was about three car loads of plugs came in there about that time. They were not supposed to be platinum plugs. They were unloaded, put in the yard, set up for sale. My men that worked for me were instructed—we knew, thought we knew, what platinum plugs were, like an AC 181, I knew and my help knew that was platinum AC 281 was platinum, RB 19, R 2 meant it was platinu m,but when we came up with an RB 5-3, that was not in our book. We did not know what it was. That was one of the plugs which later was found out to be a platinum plug.

Q. And after you later found out it was a platinum plug number were you instructed not to sell it?

A. Not to sell that, not offer that for sale.

Q. Do you know whether you had sold any of those previously on sale? Can you state whether you probably did or didn't?

A. They might have been. I couldn't say there was or wasn't, but as many plugs as we had, several hundred thousand, they could have been in there because we did find some of those boxes—

Q. Very well, sir. You say you sold several thousand plugs?

Mr. Evans:

May it please Your Honor, I don't recall the witness saying he sold several thousand.

Q. Well, did you say you sold several thousand?

A. We sold them on lots out there, on invitation and spot bids.

Q. In number, did you say several thousand or what did you say?

A. Yes, yes several thousand, common plugs, supposed to be common plugs.

Q. Well now, in those lots of several thousand that you say you sold can you tell us how they were—were they in barrels or boxes or how were they sold?

A. Well, plugs were sold out there, what we are referring to right now at this particular time, they were sold in boxes, I would say 250 to maybe 350 pounds to the box.

Q. Were the plugs themselves in a separate container inside of the box or just loose?

A. Yes, sir, some were packed individually in the little containers, some were packed in other packages.

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Q. Now, in these boxes of plugs, Mr. Galbraith, as they were packed in these boxes, were some of the boxes contaminated with platinum plugs? Did they have platinum plugs in them?

A. It turned out to be that some of these numbers that I called you, like that 5-3, that was a platinum plug. I did not know it and none of my help knew that because we had never been given that number to look out for.

Q. Well, I say were some of those type plugs in these boxes that were sold?

A. Yes, they were contaminated in the large pile of plugs lik that.

Q. That were sold?

A. Well now, to know whether any of them got out or not, I could not say, but I know we pulled many boxes of those out of there. There's a possibility they could.

Q. Well, were plugs ever put in a barrel?

A. Yes, sir.

Q. Well, if you were to go up to a barrel, sitting out there on the surplus disposal lot that was there for sale, could you pick out any platinum plugs among those that were in there?

A. I have seen that, platinum plugs mixed in there.

Q. Is that on top or did you dig way down to the bottom?

A. I've seen them any place, because at one time I was ordered out of Washington to dump eight or ten barrels of those plugs out for inspection, and they were all thru there.

Q. Did the merchandise come from Class 27 to the salvage disposal area?

A. Some of it does. Now as to whether these plugs came from there or where they came from I can't say, but some of our materiel comes from Class 27.

Q. Well, now, when the items that came over to disposal were there numerous types of items? They weren't just breakers and spark plugs and motors?

Were there all types of items there? How many different kinds of items would you say you sold there at disposal area?

A. Oh, we had hundreds.

Q. Different kinds of items?

A. Yes, sir.

Q. How big would some of them run?

A. Oh, from—different items we have for sale there run up to several tons.

Q. All right. When the items came over to salvage for you to sell did you verify that the boxes or crates or drums contained what the ticket on the outside said? Did you inspect them or take it for granted there was in there what the ticket said was in there?

A. Well, like those plugs we have in question, they came in with a tag on the box. It gave the name of what we call it, the noun and the number.

Q. Did some of the boxes come with the lids (?) inside? Wooden boxes nailed up?

A. Yes, sir.

Q. Did you tear open the boxes to see what was in them?

A. Approximately all those boxes that we are talking about were nailed up in big boxes.

Q. Did you tear them open to see what was in them or did you assume what was in them was what the ticket said?

A. No, we did not tear those boxes open because the tag was on there and we checked according to what the tag said.

Q. Do you have what you call salvage bins out there?

A. Yes, sir.

Q. And are those salvage bins big concrete bins with eight foot say, or seven foot, walls in the back

and two walls on the sides where you can dump stuff into the bins?

A. That's right, sir.

Q. And is the bin out doors?

A. Yes, sir.

Q. Is most of this surplus stuff that is sold stacked out doors on the ground or on a platform out from under the roof, for sale?

A. The majority of our surplus that we have sold out there has been out in the open.

Q. Have you ever seen any platinum pointed plugs in the salvage bins?

A. Yes, sir.

Q. While you were down there during this period I'm speaking of, Mr. Galbraith, November, 1954 to May, 1955, do you know whether you ever saw any springs there at surplus disposal? When I say springs I mean something that looks like what I am handing you here, which is Govt. Ex. No. 8.

A. Yes, sir, I have.

Q. Could you tell us whether or not, in your best judgment, in disposing of this stuff whether any of those springs were sold at surplus, or could have been sold in a lot?

A. They could have been in what we know as shop residue.

Q. Is there any distinction between shop residue and electronic residue?

A. Yes.

Q. Could they have been in electronic residue?

A. They certainly could.

Q. During this period while you were there in charge of surplus disposal or foreman there as you say, could you give us any idea of whether any of this type of merchandise could have been sold there?

I hand you Govt. Ex. No. 4.

A. As I say, that could have been in shop residue or in electronics.

Q. Or in electronic residue?

A. I think you'll find some of them were in the last sale of our electronics out there.

Q. How about this one, Govt. Ex. No. 7? Could those have been sold out there?

A. That came out of a magneto and there have been lots of magnetos sold out there.

Q. And Govt. Ex. No. 1, has that been sold out there?

A. That is a G. E. breaker and we have sold several hundred of those out there.

Q. Now, Mr. Galbraith, I'm not going thru with all these sheets, but I'll show you here a document that has been identified as Deft. Ex. No. 19 "O", and I'll ask you if you are familiar with that type of paper? Have you seen it before and know what it is?

A. Yes, sir, I do.

Q. What is it?

A. That's an issue slip for delivery of merchandise.

Q. Do you see that description on that particular document as to what merchandise is involved?

A. Yes, sir.

Q. Can you tell us or, from your experience down there, can anyone tell us each and every item that is included in that description of merchandise delivered by that document?

A. I couldn't tell you from the description on that paper as to what has been delivered.

Q. Does that paper describe certain items in general, and then have "and so forth" after it?

A. Yes, sir.

Q. With your experience down there, what could "and so forth" include, in that particular delivery?

A. If my interpretation of that "and so forth" is right that could mean anything.

Q. On that particular one do you see plugs listed?

A. I see plugs twice here.

Q. Could there have been some platinum pointed plugs included in that delivery?

A. There could have been.

Q. All right, sir, that was Ex. 19 "O". I'll just turn to one other one here. I'll show you Deft. Ex. No. 19 "E", which is another delivery sheet. Does the description of the merchandise on that delivery sheet include the word "springs"?

A. Yes, sir.

Q. Could that include one of these springs like you saw a minute ago that was in the delivery, from your experience down there?

A. Well, that word "spring" to me—I would have no way of defining what spring that was. That could be anything from a car spring on down to any other kind of a spring.

Q. Very well, sir. I show you Deft. Ex. No. 10, which is another delivery sheet. Do you see on that delivery sheet in the description of the merchandise that was delivered under that delivery ticket the word "motors"?

A. Yes, sir.

Q. Could that include, Mr. Galbraith, a motor such as the type of Govt. Ex. No. 6, which I hold here in my hand, this little black motor?

A. Yes, sir, it could—it would have had too many motors of any kind there to weigh a hundred and—unless they were like that—to weigh a hundred and fifty pounds. (?)

Q. How many of these small motors would you—well, let's ask it another way. Feel that small motor, Govt. Ex. 6. What do you think that would weigh?

A. I imagine three of those would weigh a pound.

Q. Were these type motors sold by the pound sometimes?

A. I don't think that they were sold or meant to be sold by the pound. This paper here estimates 150 pounds, that—

Q. Is—excuse me.

A. —that is merely put on there for the purchaser's description in shipping, if he's going to have it shipped.

Q. In other words, when you say on one of those delivery tickets the poundage, that does not necessarily mean that the items were sold by the pound?

A. No, sir, unless it is so set up on the sale that that's the way it's being sold.

Q. And when you see the poundage listed on the delivery slips as well as on a bid is the poundage estimated? Could it be off quite a number of pounds or up or down?

A. All of these weights, like on this, is an estimation.

Cross Examination.

By Mr. Evans:

Q. Mr. Galbraith, you are subpoenaed here by the Defendant, aren't you, sir?

A. Yes, sir.

Q. How long have you been at Warner Robins?

A. Since 1949.

Q. Who is the head of your Department now?

A. I'm not in property disposal now, so I do not know who is head of that.

Q. You were transferred out of the property disposal?

A. I am working in what is known as re-warehousing section.

Q. You know Mr. Scruggs?

A. Yes, sir.

Q. What is he out there?

A. I believe he's the disposal agent.

Q. Yes, sir. Now when he came back you were working in disposal, weren't you?

A. No, sir, I was there when he came there.

Q. What were you working in when he came there?

A. I don't understand what you mean by coming back?

Q. Well, I say come back, maybe it was the first time he was there. You were there when he came there to work?

A. Yes, sir.

Q. Were you working under him?

A. Yes, sir.

Q. I'll ask you did he recommend that you be let out from out there?

A. I think—

* * * * * * * *

Q. You don't work in disposal any more do you, Mr. Galbraith?

A. No, sir. Your Honor,—

Q. When was it you left disposal?

A. September 23. Could I explain something there, Your Honor?

By the Court:

You have a right to explain any answer that you make if you want to. You don't have to explain anything but you have a right to do so.

A. What the gentleman asked me, I don't care to explain about my separation from there, except I was foreman and I was asked to go out and do labor work. Because I told Mr. Scruggs that I did not feel that I should go do labor work when I was foreman of that place, and I asked to go see the area inspector's office, and I did, and that was the starting of my removal from there, because, as the removal stated, that I made untrue statements, but since then I have returned to work March 26.

Q. When was it you left the disposal outfit?

A. September 23, 1955.

Q. I'll ask you, did you work out there from November, 1954 to May, 1955, out there on the Class 27 lot?

A. November, 1954? No, sir. I never did work on the Class 27 lot.

Q. Well, do you know whether or not a man by the name of Andrew Jackson Wright was stealing property off the Class 27 lot?

A. I do not have any knowledge of that?

Q. Do you know whether he was delivering it to a man by the name of Tomley sitting over here?

A. I do not know that.

Q. You don't know whether he was or wasn't?

A. No, sir.

Q. All you know is about the bad way in which the Air Base was run, property disposal? Is that right?

A. I don't quite understand that question.

Q. Well, you say you saw out there platinum pointed plugs mixed up with other plugs that were being

sold as salvage, and that wasn't supposed to be done, was it?

A. I did, sir. I've seen that a long time before this case ever came up.

Q. Yes, sir. And that wasn't supposed to be done under you all's regulations, was it?

A. It was not.

Q. And you were the foreman at that time, weren't you?

A. And I did pick out all I saw.

Q. And did you report them?

A. Yes, sir. There was nobody to report to only somebody above me.

Q. Only somebody above you?

A. That's right.

Q. Well, how did they happen to get there when they weren't supposed to be?

A. Ordinance 67-1, segregation of items originates at the point of origin. The point of origin did not segregate them right. That's the way they got there.

Q. Well, when you found that condition did you do everything you could to put a stop to it?

A. We certainly did. We even called where they were coming from and they assured us they would be more thoroughly screened. We went as far as to make a platform and had them poured in there where only about three or four plugs could roll out at a time. Many times we maybe would sort a barrel and never find one. Maybe the next barrel we might find ten or fifteen.

Q. When was it you started finding the platinum plugs in with the salvage, what time?

A. Oh, I think I have saw that off and on every year that I have been out there.

Q. When did you first see it?

A. Oh, back in 1950.

Q. What did you do about it then?

A. We picked them out and took them in and put them in the place where we were keeping platinum plugs.

Q. Did you have a separate place to keep platinum plugs?

A. Yes, sir.

Q. Was that required?

A. Yes, sir. It still is.

Q. Still is? What about these other ignition parts that have got platinum on 'em? Were they separated or just thrown in with non-platinum stuff?

A. No. There's been—those breakers have been picked out of materiel and turned in and put in with the platinum.

Q. You mean that the platinum is supposed to be kept separate from everything else?

A. A breaker point had platinum in it.

Q. A breaker point was supposed to be kept separate? These things Mr. Miller has been showing you were all supposed to be kept separate? You were foreman there in disposal, weren't you?

A. Yes, sir.

Q. And if any of them were sold they would pass right under your nose to be sold?

A. Not necessarily, no, sir.

Q. Why?

A. Because I had over three million square feet of storage space and I—

Q. But you were the man that was responsible to see that there wasn't any platinum in that stuff that was sold, weren't you?

A. Up until I lost my authority there as of May 1, 1955.

Q. That was when all this broke out, wasn't it?

A. Well, I don't know whether that's when it broke out. There was nothing I knew about anything then.

Q. This conspiracy ends on May 10, doesn't it? You lost your authority on May 1, didn't you?

A. That's right.

Q. You were there on December 20, 1954, weren't you, sir?

A. I was working there. Whether I was there that day or not—

Q. I mean about that time. You were the foreman of the disposal yard?

A. Yes, sir.

Q. Now at that time did you sell Mr. Joseph Tomley a bunch of platinum pointed spark plugs?

A. Did I sell him?

Q. Or did the Base sell him? Did you make any local sales of platinum pointed spark plugs, or did the Base make any, around December 20, 1954?

A. They—along about that time I think we were selling what was known as common plugs.

Q. That's non-platinum points?

A. Non-platinum points.

Q. That's right.

A. But now as I say, if there was platinum plugs in those non-platinum plugs, listed under a different name, that came under an inspector before I ever had them.

Q. That would have been a reflection on you.

A. It would not. We did not open every box and every container to see if it was platinum. We went by the tag that the inspector put on the item. If it was a red tag it was disposal.

Q. Then I take it that you don't think it was so bad out there, that the mistake was made somewhere

besides Warner Robins, if these platinum pointed plugs were sold?

A. I don't quite understand that question.

* * * * * * * *

Q. You didn't feel any responsibility for what some other Air Base somewhere shipped you all some old plugs in there might have done in the way of throwing a few platinums in along with just regular plugs? You didn't feel any responsibility for that, did you sir?

A. Well, we had—as far as when they made them up for shipment, we had no responsibility for that. But we did check them according to the tabs per box and per package.

Q. So you don't know whether any platinum plugs were sold to Mr. Tomley out there or not do you?

A. Not knowingly, no, I don't.

Q. What you are trying to say is that they could have sold him some in some other junk, isn't it?

A. I would say there have been platinum plugs sold in other materiel, but to who I don't know.

Q. Do you know that to be true?

A. Well, yes.

Q. Who did you report that to?

A. I didn't report that. That was already reported. That was before we started screening—

Q. You were the foreman that's supposed to see that it's not mixed up that way and you knew about it and knew about Government property being fraudulently sold, so to speak, and you didn't report it?

A. Whenever those plugs in those barrels were noticed to be contaminated with ten or fifteen platinum plugs to the barrel, that's when we started screening plugs.

Q. How did you happen to discover it to start with?

A. Well, if you looked at a barrel once in a while you would see one or two. I instructed my men if they ever saw any to pick them out and bring them in to the storage of platinum plugs.

* * * * * * * *

Q. I thought barrels were bolted up and you couldn't see in them?

A. I never said they was.

Q. Then why didn't you inspect every barrel?

A. Well, as I told you, I—er—

* * * * * * * *

Q. Answer the question please.

A. What was it again?

Q. Why you didn't inspect every barrel?

A. Well for the first place, as I told you, my instructions said segregation started at the point of origin, and we did call this place where the plugs come from and they assured us they would be more securely segregated in the future.

Q. Yes, sir, but if barrels came in there open where you could look at them and for years there they had been putting platinum points in there with the junk spark plugs, and it was your duty to report that, if it came up, and to see to it that people weren't sold platinum plugs for junk, then was there any reason why you shouldn't have followed your duty there?

A. I don't never remember seeing a platinum plug go out of there.

Q. All right, sir then the chances of Mr. Tomley having gotten any would be mighty thin, wouldn't they?

A. Not necessarily. If I didn't see 'em or anybody else didn't see 'em, if the bought 'em, say if they were marked one number and were something else, that was the way the checkers out there checked them.

Q. Yes, sir, but you came up here to testify for Mr. Tomley in this case, to—

A. I came up here to tell the truth.

Q. Wait a minute. Let me finish the question. You came up here to testify for Mr. Tomley in this case to show that there was a likelihood that this man Wright is telling a falsehood, and that he could have bought them in a bunch of junk that he bought out there. Isn't that what you came to testify to?

A. I did not. I came to tell you the truth as I know it.

Q. Isn't that what you contend the truth is? You've been testifying to this jury that Mr. Tomley could have gotten all of this stuff out there because they just sold anything any time under any pretext? Isn't that about it?

A. No, I didn't testify that.

Q. That's not what you meant?

A. No, sir.

Q. Well, what do you think the chances are—you used the word "could" a lot while ago—that he could have sold 'em in this different junk? What do you mean by that word "could"?

A. Well, we'll take it this way then. In a bin out there, if there's five tons of all kinds of materiel and they are ranging all the way from three or four ounces up to ten pounds, if it was hauled in and dumped in here by a dump truck, there could have been most anything in there.

Q. I see. In other words when it was going thru your hands there?

A. It didn't go thru my hands.

Q. Didn't it go thru your supervision as foreman of the yard?

A. I did not have the help to dig into a bin that had tons and tons in there and handle every piece hand by hand.

Q. Well, if you say you don't know of any spark plugs having been sold out there with platinum on 'em in a bunch of junk, if you say that on the one hand then how, on the other, do you say that Mr. Tomley could have bought some?

A. Well, that I don't know.

Q. I'll ask you, Mr. Galbraith, were you or were you not ever reprimanded out there for misuse of government property?

A. I was.

Q. Now I'll ask you sir whether you were ever up for giving a man by the name of Mann a pair of government boots?

A. That's the same thing I'm referring to.

Q. Same thing? I'll ask you whether or not the General—

* * * * * * * *

Q. How much of this other stuff Mr. Miller showed you, this platinum pointed stuff has been sold out there, during the period of time we are talking about, under a classification it wasn't supposed to have been sold under?

A. Well, er, there's nothing there only those small points, and I don't know that they were ever sold that way. I say they could have been.

Q. But yet you testified that Mr. Tomley could have bought them that way. What do you mean "he

could have bought them''? What leads you to think he could have bought them that way?

A. As I told you, 500 pounds of small materiel ranging from the size of a nut to a bolt of five pounds, those items could be mixed in there.

Q. Well, are you testifying that they were probably mixed in there?

A. I say they could have been. You asked me—

Q. Of course, this package of cigarets here could have been in there too?

A. Yes, sir.

Q. Is that what you are talking about? Anything could happen?

A. You asked me how he got them, and I say that's the way he could have got them.

Q. Are you just testifying that anything could happen?

A. No, I'm not going to testify that anything could happen.

Q. Are your orders out there as foreman of that place, were your orders to sell any of that platinum pointed stuff along with that junk and debris that sold by the pound?

A. No, sir.

Q. What were your orders?

A. Everything pertaining to platinum, and that was one of the restricted items, silver—of course we never got much gold thru there, gold came a different direction—we had a place to put that in a restricted place, supposed to be locked up.

Q. As a matter of fact if somebody, you or somebody under you out there on the yard, had sprinkled some of that platinum stuff into a lot to be sold and then Mr. Tomley or anybody else had come along and bought it you all would have all been guilty, wouldn't you?

Mr. Miller:

I object to that as argumentative, Your Honor, and it calls for a conclusion of law.

By the Court:

You can ask him what his duties are and what he did, but as to whether or not he would be guilty, that might be a question for me and the jury.

Mr. Evans:

Well, I mean guilty of an infraction of his regulations.

Mr. Miller:

Well, let Counsel say what he means.

Mr. Evans:

I'm sorry.

Q. Would that be a violation of your regulations and instructions to either sprinkle platinum stuff in this junk that's going to be sold or to allow somebody under you to do it?

A. It would be if I knew it.

* * * * * * * *

Q. Now you say that Mr. Tomley could have gotten it thru his purchases out there. Just what do you mean by he "could have" gotten it. What is the basis that you put that on?

A. Well, those tally sheets you just now showed me marked plugs, that doesn't say whether they are platinum or common plugs. I believe that right today you can go out there and take you a bid sheet

and look at the lot number and I'm satisfied that you'll find a lot of materiel that is not listed on that tally sheet.

Q. And that was going on when you were in charge of it?

A. I didn't say that was when I was in charge. I say today.

Q. What we are talking about though is the period you were in charge. You were in charge all the time out there from the time in November, 1954 down to May 10, 1955.

A. I beg your pardon.

Q. I mean May 1, to May 1. There were ten days there you weren't in charge before this conspiracy ended.

A. I think I was away on vacation from about the 25th or 28th of April on up thru May.

Q. Yes, sir. Now this shop residue? You said some of the springs could have been sold in the shop residue. What did you mean by the shop residue? You mean the sweepings up from the shop, cast off, broken pieces and defective parts? Is that what you mean?

A. Down in the different shops. We got shop residue from all of the different shops, electrical, maintenance, tin shop. It might be a part that came—if it came from electrical there might be a part of a motor in there, motor might have been torn down completely, found to be no good, all throwed in the box. And, as I say, those came up there in boxes bearing from fifty up to three hundred, maybe four hundred pounds.

Q. I see.

A. Shop residue.

Q. That's from all the different shops?

A. If it was materiel that was too small, real small materiel, it was a loss to put it in bins because we clean the bins with clam shovels and they will not pick up small materiel.

Q. Do workmen out there commonly throw away platinum pointed stuff in the shops, throw it into the shop debris? Is that a common practice?

A. Well, I wouldn't say it's a common practice, but it could be done, could accidentally be done.

Q. What if you, in your job as foreman, had run into a bunch of shop accumulations there and you had seen a bunch of platinum stuff in it coming from the ignition repair section out there, what would you have done?

A. When we'd run into materiel that had platinum in it, as I say, we had a section in there where platinum was kept, and we would take it in there.

Q. Would you report the fact that platinum was coming from such and such an operation out there?

A. No.

Q. Why wouldn't you?

A. Because we had a place to put that materiel and it was turned in to us as residue.

Q. I see. Were you supposed to go thru the residue?

A. Wasn't supposed to handle everything like that, but if we found it, why—

Q. Wait. Were you supposed to go thru the residue to see that there wasn't any platinum in it? Was that a part of your job?

A. That was one part of the job, looking constantly for materiel that was in the wrong place.

Q. And if you found it in there, people weren't supposed to put it in the residue were they?

A. Well, if we found it in there they generally heard about it.

Q. That's right. That's what I'm getting to. How many times did you have occasion to report people for putting platinum residue into junk?

A. Off-hand, during that time, my time there, there were several times they were called down from where the plugs were coming from. I think Major Workman has called them and I know that Richard Jones had called them.

Q. How many times did you report them?

A. I didn't do that. I turned that in to my superior.

Q. That's what I mean. How many times did you turn it in to your superior?

A. Oh, I don't know the exact number of times, but many times.

Q. Well, name me a few of them.

A. What do you mean, name them?

Q. I mean th I want to know one day when you found some residue from the magneto section, for instance.

A. I would not have reported that.

Q. Why?

A. If it was platinum that came out of there we have a platinum bin; that was turned in as residue, that was part of our segregation, to know what platinum is, what stainless steel is, different things. We have a number of different metals and we have places to put that materiel.

Q. Well, you said that those little springs could have been in shop residue and electronic residue, that that's one of the places Mr. Tomley could have bought those things, a couple of thousand of those springs. Now what I'm getting at is when did you ever see any platinum, when did you ever discover any and report it in any shop residue?

A. I told you I did not report any any place only to our place there. We had orders—

Q. That's what I'm talking about. Who did you report it to in your place?

A. I have called Major Workman's attention to it several times.

Q. All right. About what now, shop residue? Platinum in the shop residue?

A. No, I don't know as I called anything about that to his attention, because there never was enough to excite anybody.

Q. What about in electronic residue?

A. Electronics I'm referring to now all happened after I left there. We never did have electronic bins until after I left there, but we had electronic materiel that was being sold on the lot.

Q. Let's stick to what you are telling the jury. You are telling the jury that Mr. Tomley, according to your experience out there, it wouldn't have been difficult for Mr. Tomley to have bought a couple of thousand of these springs, two or three hundred of these units that go on those distributors, little motor charger guns, wouldn't have been any trouble for him to have bought them. Is that what you are telling this jury?

A. Now you are quoting the figures. I'm not quoting the figures. I'm saying that they could have been in there; some could have been in there.

Q. And you want this jury to understand, when you say they "could have been in there" that you mean that more than likely they were in there, don't you?

A. Exactly as I said: they could have been in there.

Q. Well, this jury is entitled to know about what the probabilities of them having been in there are.

That's what we are talking about. What is the degree of probability, Mr. Galbraith?

A. I say they could have been in there. That's my answer.

Q. But I believe you said you never saw any sold that had platinum in it? Is that correct?

A. Saw any what sold?

Q. Any materiel that was supposed to be junk out there. I believe your testimony is that you never saw any sold that was supposed to have been junk that had platinum in it?

A. Not knowing that there was platinum in there, no, sir.

Q. And you said you had a place to separate the platinum and put it over there under a separate lock and key?

A. Yes, sir.

Q. And you say that a part of your job was to make an inspection of this materiel and look at it and if you saw any platinum in it to fish it out and put it over there under lock and key? Is that right?

A. My job as foreman—I had people working under me, and I had them scattered at widely separated areas at the same time. When I saw anything which was not right I either called some of the people who were working's attention to it or helped do it myself. Now as for the point that you were speaking of while ago, there have been hundreds and hundreds of those G. E. magnetos and such as that sold out of there, but I do not have any authority to destroy government property when it is sent to me for reclamation with the order to sell it.

Q. Well, what you mean in all of this, you mean that he could have bought those big G. E., what did you say, magnetos?

A. Magnetos.

Q. Magnetos, and that that's where he could have gotten these points?

A. He could have got lots of them that way. I don't know how many he bought or whether he bought any.

Q. How many magnetos would he have had to have bought to have gotten two thousand points?

A. I don't know. I really don't know how many there is in a magneto.

Q. How long did you work out there?

A. '49 to '55.

Q. About how many are in there? You got any idea?

A. Oh, there wouldn't be over three or four any way, I imagine.

Q. You all sell as many as five hundred magnetos out there?

A. I believe we have sold 1500.

Q. Those records would be available, wouldn't they, magneto sales?

A. Should be.

Q. How many would you say was sold there in the last six months you worked there, from November, 1954 to May, 1955?

. . . . . .

Q. I'm talking about any kind that went thru your division, the disposal division, all kinds of magnetos.

A. As for the exact number I couldn't say, but I have saw lines of those lined up across the yard.

Q. How many would you estimate in the last six months you were there, and they all passed thru your department, the last six months that you worked there?

A. I can't answer that because I did not pay any particular attention to magnetos enough to count them.

Q. Would you say approximately a hundred and seventy four?

A. I believe that would be safe.

Q. Think that would be about right. How many springs would that have in them all told, two or three times that, four times?

A. I told you I am not no authority on those. I don't know.

Q. I see. Did all those magnetos have platinum, or had part of them been stripped before they came there?

A. They came there both ways.

Q. As a matter of fact they run about half and half, don't they?

A. I don't think so.

Q. More with platinum or less?

A. I think there's been more sold with platinum.

Q. I see. Now you say you saw thousands of spark plugs sold out there. Is that correct?

A. Referring to common—

Q. But when you said that you didn't mean thousands of platinum spark plugs did you?

A. I did not.

Q. The kind that they put out there and back up on the ground and have what they call a spot sale, that's just old junk spark plugs, isn't it, without any platinum on it?

A. Now—

Q. Except for those that slip thru?

A. You make a statement there I don't understand. You say back up on the ground? I've never seen them backed up on the ground.

Q. Well, I mean sitting on the ground. That's the way you do the spot sales don't you, put 'em out on the hard ground?

A. On pallets, yes, sir.

Q. You put them out there, and they are not supposed to be platinum plugs. the ones you saw sold, were they?

A. I said I had saw thousands of common plugs sold but I did tell you I had never seen a platinum plug sold.

Q. Yes, sir. Do you, or, in your opinion could a man have stolen from Class 27 this platinum materiel?

A. That, I do not know cause I don't think I was ever down in Class 27 area after the tornado, so I don't know where that materiel was kept, whether it was in Class 27 or whether it was warehoused.

Q. You testified while ago that some of these platinum materiels could have been sold out there on those spot bids by having been mixed up in the other. Now that same kind of "could", I want to ask you, could an employee up on Class 27 have stolen the stuff up there?

A. That, I don't know.

Q. Would there be about as much probability of one as of the other?

A. Now what is your question?

Q Do you know anything about where Mr. Tomley got any of this materiel that he is charged with having wrongfully?

A. I do not. I do not have any knowledge of his materiel whatsoever.

Q. How long have you known Mr. Tomley?

A. A year and a half, maybe two years. I don't know exactly.

Q. How did you meet him?

A. Well, thru him coming into the salvage yard there once or twice a week.

Q. Is he in the salvage yard once or twice a week, was he rather, at that time?

A. Well, that's were I met him and from that time on he came in and out like all ordinary bidders do.

Q. I see. Did you have any dealings with Mr. Tomley yourself?

A. I did not.

Q. Did you ever inspect any of the lots that he was buying?

A. I suspect I have. I generally got around to most everybody's truck sometime and looked to see what they were getting.

Q. Did you ever see any materiels in the stuff that he was buying of a platinum nature?

A. Not unless it would have been in a magneto that he had legally bought.

Q. He bought it all legally, didn't he sir?

A. Well, you are talking about—I'm making sure that it was legal.

Q. Did Mr. Tomley ever come to you and tell you that some platinum stuff had been put in some of his materiel that wasn't supposed to be there?

A. No, sir.

Q. You don't know whether he discovered a bunch of platinum materiels that were in his junk materiel that he was buying?

A. I think Mr. Tomley came to me one time before a sale was over and asked me if we were—if all those plugs out there were for sale, and took me out and showed me, I believe it was a 43S, box of plugs. I believe that's the number. I wouldn't swear to that, but anyway on that order, and they were marked 34 S. 34 S is not platinum.

Q. Well, did he show you some platinum stuff?

A. We opened the box and each one was in a private container, and then is when we started screening that materiel out for sure.

Q. Was it platinum?

A. It was platinum, yes, sir.

Q. In the stuff that he was fixing to buy?

A. Yeah, but it was marked under a different marking.

Q. I see.

A. We did remove it. I don't remember how much it was.

Q. Had he bought that at the time he did that?

A. No, I think that was before the sale.

Q. Before the sale ever came up?

A. Well they were open for bids. You understand when we put up a sale out there it has a certain amount of time—you have a certain amount of time to come out and inspect the merchandise and place your bid and they have a certain time to close that bid.

Q. I see. Now who did you report that to, when Mr. Tomley reported that platinum in there?

A. That was—I don't know whether I told that to Mr. Scruggs or Mr. Workman, but any way then we did go thru these boxes. There were mountains of boxes.

Q. When did that happen.

A. I do not remember the exact date, but that was along about the time we had so many plugs there to sell.

Q. In relation to the time when you left there, how long was that before you left?

A. Oh, I would say that was probably a year before I left there, maybe six months any way, between six months and a year.

Q. Well, that would have been sometime from the middle to the end of '54, wouldn't it?

A. Best I remember it was back near around the first part of the year.

Q. First of '54?

A. Some place right in there. I do not remember the date exactly.

Q. Now who else was present there when Mr. Tomley showed you those plugs in there with the platinum tips?

A. I don't think anybody was present. He came up and called me and then I in turn called my receiving man and we went out and looked.

Q. What is your receiving man's name?

A. Owen Winston.

Q. Is he here now?

A. I haven't seen him.

Q. Does he still work out there?

A. Yes, sir. So him and I went out and went thru that large pile and we did find several big boxes by opening, taking the lids off and opening the individual containers. The containers were even wrong.

Q. That was in early '54. How much had Mr. Tomley bought prior to that from you all?

A. How many what?

Q. How much materiel had he bought prior to that? Had he been trading out there long at that time, or not?

A. I don't know how long he had been there. Seemed like a year or a year and a half to me that he had been here.

Q. When did he start out there, about 1952?

A. I can't answer that for sure, but I don't think so.

Q. When did you first meet him?

A. That I don't know, because he was just like any other man coming in there, like yourself. If you came in there in '53 I couldn't tell you the day I met you.

Q. That impressed you though, when Mr. Tomley picked those platinum plugs right out of all that junk, didn't it?

A. Well, yes, I was very glad that he did, I'm telling you that.

Q. It was just lying up on top of a barrel of plugs was it?

A. Is that what I said?

Q. I'm asking you?

A. Well, you know it wasn't what I said. I said there was mountains of boxes of plugs stacked up way high. We had to take lifts and move tons of plugs sometimes to get a box.

Q. I see, but boxes were all out in the open where you could look into a box?

A. Oh, no, you had to have a hammer and crow bar.

Q. Did Mr. Tomley take a hammer and crow bar and go in it?

A. I didn't see him do it.

Q. How did he know about it?

A. I think he pulled a little piece off of the box or something.

Q. You mean off of the wooden crate?

A. Yes, sir.

Q. And looked in there and saw it? Is that customary?

A. That's your privilege.

Q. I see. And that was done in the presence of Mr. Winston, or you reported it to Mr. Winston?

A. I didn't say it was done in his presence.

Q. Whose presence was it done in?

A. Which are we speaking about, what Mr. Tomley done or what I done?

Q. What Mr. Tomley did.

A. Well, you can leave Mr. Winston out of there.

Q. All right, sir, I don't want to get it confused. Tell me just exactly what Mr. Tomley did.

A. He came to me and told me there was materiel out there in those plugs, wanted to know if we were selling them, asked me to go out and look at them, and I took a hammer or screw driver or something along and opened the box, opened the container, and I told him no we were not selling them.

Q. I see. Now he had already opened one box, hadn't he?

A. Well, I think he had got it out from the side some way.

Q. Did he show you the one he had opened?

A. I think he did.

Q. Well, you would remember that, wouldn't you?

A. Well, a little incident like that was the only thing I had to think of certainly I would, but I have—

Q. But that was the first time you had ever known anything about all that platinum coming thru and being sold for junk, wasn't it?

A. Well, I mighty soon would have found out there was some in there.

Q. Didn't you just jump right straight up when you found out you were the man in charge and you were selling that junk and it was full of platinum? Didn't that impress you when he walked up there with that?

A. It did. I was mighty glad that he did.

Q. And when you went back there didn't you ask him, "Now, where did you get this from"?

A. No, he took me right straight to it.
Q. And a piece of the box was broken off?
A. (Nodded his head.)
Q. And it was all mismarked?
A. The tag, one tag on the box.
Q. What about the markings on the box?
A. And the containers.
Q. Were they wrong?
A. Most of them were wrong.
Q. You mean they were mixed up, part of them was right and part was wrong? When you inspected that box did it look like it had been tampered with lately or before it was shipped down there?
A. That box, referring to all of the boxes, they were not tampered with.
Q. Sir?
A. Referring to all of the boxes we took out they were not tampered with.
Q. What about the wooden box?
A. They were all wooden boxes.
Q. There were little boxes inside of the wooden one. Were the wooden boxes tampered with?
A. The wooden boxes had to be tampered with before the small box inside could—
Q. Had it been?
A. No, sir.
Q. The wooden boxes had not been tampered with?
A. Had not.
Q. Well, how did they change the little boxes on the inside?
A. I don't know whether that was done or not, whether they were changed.
Q. Now was that whole thing reported to Mr. Crutchfield, the investigating officer out there, when that was done, or to the FBI?

A. I didn't see any reason for that. If it should have been it should have been carried thru on from the front office.

Q. Who was it you reported that incident to?

A. I don't recall, I told you, whether I talked to Major Workman or Mr. Scruggs. I don't believe Mr. Scruggs was there.

Q. Mr. Galbraith, do you mean that after you discovered this big fraud—and that was a fraud being practiced on the Government, wasn't it?

A. I wouldn't call it a fraud. It was carelessness of somebody, whether it was on this Base or wherever the plugs came from.

(Recessed 12:30-2:00 p.m.)

Re-Direct.

By Mr. Miller:

Q. Mr. Galbraith, are you still out at Warner Robins working?

A. Yes, sir.

Q. Still employed by Warner Robins Air Materiel Area?

A. Yes, sir.

Re-Cross.

By Mr. Evans:

Q. I would like to ask one question. When did you go back?

A. March 25.

Q. How long were you out?

A. Six months.

Re-Direct.

Q. Did you lose any pay during that period?
A. No, sir.
Q. Pay was fully paid to you?
A. I was restored out there and my record was cleared and I was paid for the six months I was off.

Re-Cross.

Q. You say you were restored?
A. Restored or returned or whatever you might call it.
Q. Who restored you?
A. AMC.
Q. Who?
A. AMC, Wright Patterson.
Q. What is AMC?
A. That is the controlling command over Robins Air Force Base.
Q. Did the civil service restore you?
A. Well, I got civil service papers.
Q. Was that the basis that you were restored on, that you were civil service?
A. My papers that I got said that the hearing that I hearing at AMC, that they did not go along with what I was charged with.
Q. I see. You were charged and dismissed by the General at Warner Robins, weren't you?
A. I don't know whether you would call it the General. I was charged there on a grievance hearing and lost it there. Carried it to the AMC on grounds of impartial treatment out there and my notice from them was that I had been returned, would be re-

turned to duty, that they did not go along with the charges made against me.

Re-Direct.

Q. Were these charges that you have mentioned placed against you, did they have anything to do with the sale or disposal of salvage?

A. I was charged with making misrepresentations.

Q. With respect to what?

A. To my supervisor.

Q. With respect to what?

A. The main thing was about consideration of higher jobs that came up in there, and as to some handling of materiel in that yard, sir.

Q. Was it anything concerning the sale of merchandise to any particular person?

A. No, sir, I don't think there was.

Re-Cross.

Q. What about those boots? Was there anything in there about the boots that you gave to Mr. Mann?

A. I don't think so.

Q. How long have you known Mr. Bilderback?

A. Oh, I think he was buying there when I went to Property Disposal, early fifty.

Q. Did you ever meet with Mr. Mann and Mr. Bilderback at the same time?

A. I never did, sir.

Re-Direct.

Q. You know any other surplus dealer besides Mr. Tomley and Mr. Bilderback?

A. Yes, I know partically everybody that came in there.

Q. Well, I know a few. Let's see if you know them. You know Mr. Tharpe?

A. Yes.

Q. A Mr. Herndon?

A. Yes, sir.

Q. Know a Mr. Brisco?

A. Yes, sir.

Q. Know a Mr. John C. Thomas?

A. I do.

Q. You know a Mr. Myers or Miles or something like that?

A. Mr. William Myers?

Q. Yes.

A. Yes, sir.

Q. You know more than that? That's all I know.

A. Oh, yes, sir. I know—there's several hundred in there in the course of time.

Re-Cross.

Q. You know Mr. Andrew Jackson Wright?

A. I know him when I would see him. I was not too personally acquainted with him. I knew him when I seen him. I seen him several times before I ever knew who he was, might say for a year.

Q. You ever have any dealings with him?

A. I did not, sir.

Q. Did he ever help you in any way out there?

A. He did not, sir.

Q. You don't know anything about him taking this property?

A. I do not. All I know about Mr. Wright was that he was driving a truck, hauling materiel to different

parts of the base. He did haul materiel into Property Disposal.

Q. He hauled it into your area?

A. Into the Property Disposal.

Q. He was the man between Lot 27 and Disposal?

A. Well, he hauled from different places, I believe. It came into receiving, our receiving place there.

Q. Yes, sir, and you never did know of any of his activities?

A. No, sir. As I say, I was not very well acquainted with Mr. Wright.

Q. Was he the same man who hauled this load of stuff you found the platinum plugs in where they weren't supposed to be, or rather where Mr. Tomley found them?

A. No, I think those plugs came in on flat cars.

Q. I see. They came in from somewhere off the base?

A. No, sir, I believe they were loaded some place on the base. I don't recall where from.

Q. And came into there on flat cars?

A. Yes, sir, because trucks and trailers were a scarcity out there and they loaded them on flat cars and they came over there on the siding and we unloaded them as quick as we could get to them.

Q. And what report did you make of that? I've asked you two or three times but I never did find out what superior you reported that to?

A. Well, as I say, I don't remember now. There was nothing—I couldn't see anything criminal about that. It was a mixture of plugs. I think the lot was canceled and was then completely removed and resegregated.

Q. And you don't recall who you reported it to?

A. No. It would have been somebody up in the front office. At that time I don't remember exactly who all was there.

Q. And that was the first time you had ever seen a mix-up in plugs like that, and Mr. Tomley called that to your attention?

A. In this condition, in boxes of say 300 or maybe 350 pounds of plugs. That was the first time I saw it like that.

Q. And that was big enough to where it attracted your attention, didn't it?

A. Well, the tag on there was all we had to check by.

Q. Yes, sir, but when Mr. Tomley called it to your attention you realized then what a monstrous error was being made over your name, didn't you, for that to be passing thru your hands, being sold out there as scrap plugs. Didn't it kind of impress you?

A. Right then I knew that was wrong and I think immediately those plugs were canceled.

Q. Had you ever run into a situation as big in importance as that was up to that time?

A. No, sir. Right now I don't recall anything that big.

Q. And you don't recall who you went to with it?

A. No, I don't know whether I went to the Major or whether I went to whoever was his assistant up there.

Q. All right, sir, that's all.

(Witness excused.)

MR. LEWIS L. LENTENI, being called by the Defendant, and having been duly sworn, testified as follows:

Direct Examination.

By Mr. Miller:

Q. Give us your full name, please, Mr. Lenteni?

A. Lewis L. Lenteni.

Q. Were you formerly employed by Joseph Tomley here?

A. Yes, sir.

Q. Approximately when was it that you went into his employ?

A. Approximately April of 1954.

Q. At that time you were living in or around Macon?

A. Yes, sir.

Q. When and where did you meet Mr. Tomley?

A. I first met Mr. Tomley at the Magnolia Restaurant where my wife was employed.

Q. Your wife was employed at the Magnolia Restaurant out there on Houston Avenue?

A. Yes, sir.

Q. And in what capacity were you employed by Mr. Tomley? What did you do for him?

A. Well, I was the only man that was with Mr. Tomley and he had various jobs there, an occasional letter to be typed, goods to be stacked around, but I had originally started with him with the idea of an apprenticeship in ball bearing maintenance, repair and reconditioning.

Q. Did you get the idea that Mr. Tomley was a ball bearing man?

A. Yes, sir.

Q. Now did Mr. Tomley have any warehouses at that time, and if so where were they?

A. He had just moved in, as I understood it, to a warehouse on Cochran Field. I don't know the number of the warehouse.

Q. And at that time was Mr. Tomley on his own, that is buying surplus on his own, in his own name?

A. Yes, sir.

Q. I believe subsequent to that Mr. Tomley formed some corporation he called C. T. Sales?

A. That was after I had left Mr. Tomley's employ.

Q. And about when did you leave him?

A. About the second week in December that same year.

Q. This was '54?

A. Yes, sir.

Q. Now, on occasions while you were in the employ of Mr. Tomley did you go out to Warner Robins Air Base to pick up any merchandise or materiel that he had bought?

A. Quite often.

Q. I'll show you a document here identified as Deft. Ex. No. 16, which has further been identified as a delivery sheet. Does that sheet bear your signature where you went out and picked up the merchandise?

A. Yes, sir.

Q. Did you do that several times?

A. Quite often.

Q. You sign your name "L. L. Lenteni"?

A. Always.

Q. Well, now when Mr. Tomley had his warehouse there was it already fixed up with shelves to put merchandise on or what was the situation of the warehouse when you came into his employ?

A. It looked like a dump. There were no shelves. Everything was placed in the middle of the floor and it was just a conglomeration of stuff to me when I saw it.

Q. Had you ever been in the surplus business before or connected with it?

A. No, sir.

Q. Well, did you have anything to do with rearranging the materiel there and building shelves and storing it on the shelves and putting certain items in certain places?

A. I like to think I was responsible for most of it, at Mr. Tomley's direction.

Q. Well now, during the course of that sort of an operation you had out there, did you open up boxes and get materiel out and put it on various shelves wherever Mr. Tomley said to put it?

A. Yes, sir.

Q. Did you run across—let me ask you this. Were boxes there, wooden boxes, some of it wooden?

A. All sorts of boxes, wooden and cardboard containers.

Q. Well now, when you opened up the wooden boxes would you at times find a box on the inside of the wooden boxes or cartons?

A. Yes, sir, quite often.

Q. Can you tell us whether that materiel in boxes we are talking about came from Warner Robins, or some of it came from there, to your own knowledge?

A. Yes, sir. Some boxes I have taken myself from Warner Robins to the warehouse.

Q. You hauled some of it personally from Warner Robins?

A. Yes, sir.

Q. Well now, sometime during your employ did you open a box and run across any springs in it?

A. Yes, sir.

Q. Did you know what they were when you opened the box?

A. No, sir.

Q. What did they look like?

A. They were small, blue—looked like blue gun metal with a point. I mean—I've been familiar with automotive parts, and looked like half of a set of points.

Q. I show you Govt. Ex. No. 8 and ask you if that is what you saw in there, or does that look like what you saw in there?

A. That looks very much like what I saw in there. In fact I'm almost sure that's what it was.

Q. Very well, sir. Now what did you do with those, or what did you do when you found them?

A. Well, I didn't have any—I was inventoring a particular—I used to break down things by manufacturers and by components. I was on magneto parts, on Bosch magneto parts, and I was inventoring all the items we had concerning Bosch magnetos and these were in Bosch boxes.

Q. I forgot to ask you what was in the boxes besides these springs.

A. Bosch blocks.

Q. What's that?

A. It's the section that the wires come in. Wires are attached to the block and then your fire goes following your points to that. I'm a little vague on that. An aircraft mechanic could probably explain it much better. I followed thru like an automotive mechanic.

Q. Now this box that you say the blocks and these springs were in, what sort of boxes, wooden or what?

A. Well, they were—the springs were in small cardboard containers, roughly, I would say, about six inches square, maybe ten inches, something like that, and these were inside cardboard cartons, which were inside a wooden box. The wooden box had two large cardboard cartons in it, and they were also strapped and nailed shut. When I got to opening them up I found the two smaller cartons inside of one of these cardboard cartons.

Q. Well now, do you know whether or not that particular box came from Warner Robins, the wooden box you are talking about?

A. It would have to. It was one of the boxes I myself had taken into the warehouse.

Q. Well did you, in opening up boxes and putting the merchandise on the shelves, frequently run into items that you didn't know what they were?

A. Quite often.

Q. When you ran into those sort of items what did you do?

A. Well, if Mr. Tomley was around I used to ask him what they were.

Q. All right, with respect to those springs that you have identified, what did you do with those? I believe you said you didn't know what they were?

A. I stuck one in my britches and during dinner time I saw Mr. Clott and asked him what they were.

Q. Who is Mr. Clott?

A. He's a surplus dealer on the field.

Q. And what did he tell you they were?

A. He said he thought they were breaker springs.

Q. Later did you approach Mr. Tomley?

A. We found out later on that some of them were in tubs and they had a number on it with a Bosch, and I set them aside not knowing for sure what they

were. Mr. Tomley saw them and took them and set them in a special room we have for that type of materiel in the warehouse.

Q. Well, was it part of your job in inventoring, opening up the boxes and inventoring them, to count them?

A. It was my job when I inventoried to count them.

Q. Did you count these springs?

A. Yes, sir.

Q. Could you tell us how many there were?

A. I only say there was over a thousand, and I hit the number 1028, but that's been quite a while ago, but I feel sure it was over a thousand of them.

Q. When was this, to the best of your recollection?

A. This was, I would say, the first or second week of September, 1954.

Q. Well, now, do you know anything about any acquisition by Mr. Tomley of any G. E. breakers, or do you know what a G. E. breaker is?

A. I know a G. E. breaker by the G. E. stamped on the breakers.

Q. If it's got G. E. stamped on it you can tell what it is.

A. It's G E then

Q. You know of Mr. Tomley acquiring any of those?

A. I remember we were shipping out some cams one day and I tore off the, er—they have a manifest or something that they stick on the outside of the carton. I was told to ship the carton as a whole as cams and I saw this manifest in which it said there were supposed to be breakers inside, and it gave the G. E. number and so forth on it. I don't recall what it was. So I thought I'd better open it before I shipped it and there were mostly cams in it, but there were some G. E. breakers in there also.

Q. When was that, about?

A. I would hit it right close about the same time. It would be in about the first of September.

Q. Now you were with Mr. Tomley, you say, from about April of 1954 until sometime in December of 1954?

A. Yes, sir.

Q. During that time do you know anything about his acquisition of any spark plugs?

A. Well, we got some spark plugs in, odds and ends. I mean we got two or three in boxes that came from Warner Robins and he also had a shipment of bearings and miscellaneous items from Cleveland, Ohio. I'm pretty sure where they come from. A 32 foot trailer brought in a load of bearings from them. We unloaded them and found spark plugs in many of those boxes. They seemed to be scattered, you know, like lawn seed or something like that.

Q. Now this shipment you said came from Cleveland, from whom did it come from there?

A. I believe it was Mr. Tomley's equipment he had while he was up there.

Q. Is it your understanding that Mr. Tomley was formerly a surplus dealer in Cleveland?

A. No, I didn't realize he had been in any surplus there, but I knew he had been interested in ball bearings up there too.

Q. Well now, while you were out there at Mr. Tomley's during that time did you have any knowledge or see any other materiel acquired? Was he just buying spark plugs and breakers and points?

A. His purchases actually, to me, they amounted to more in the ball bearing line. We would buy mostly ball bearings and separate them by numbers and sizes preparatory to reconditioning them. We were setting up a re-conditioning bearing shop there.

Cross Examination.

By Mr. Evans:

Q. Mr. Lenteni, you say you went to work with Mr. Tomley in April, 1954?

A. Yes, sir.

Q. Did you go on his payroll regularly then?

A. No, sir, I worked with him on a part time basis.

Q. Were you enough on the payroll to be under social security?

A. No, sir, not at that time. I was working with him on a different basis.

Q. You were working on him or working with him?

A. Working with him.

Q. I see. When did you go on a different kind of basis?

A. I was running a candy route when I first started with Mr. Tomley. I was trying to build a candy route and er—

Q. Well, when did you go on with him to where you had social security standing with him?

A. I did not have social security standing with Mr. Tomley.

Q. You mean at no time you worked for him?

A. No, sir.

Q. He paid you, didn't he?

A. Yes, sir.

Q. What did he pay you?

A. Weekly.

Q. How much?

A. $40 a week.

Q. And you didn't go on social security?

A. No, sir.

Q. How did he pay you?

A. Cash mostly, check.

Q. He pay you cash?
A. Yes, sir.
Q. Did he pay you by any checks?
A. I believe he gave me a couple of checks.
Q. Well, you were there you say for eight months, drawing $40 a week. How many times did he pay you by check?
A. I would say about two or three times at the most.
Q. Did he deduct your income tax?
A. No, sir. I was working more or less as a self-employed person with Mr. Tomley, at so much work for so much money and the income tax was up to me.
Q. How many hours a week did you work?
A. They would vary.
Q. Well, you straightened out all this stuff that Mr. Tomley got. How long did it take you to do that? Stuff that was piled up down there in that warehouse?
A. Well, as far as it got piled, it took the time I put in.
Q. Now let's go back here to April, 1954. You say you went there primarily to learn how to be a ball bearing artist?
A. Yes, sir.
Q. Ball bearing operator?
A. Yeah.
Q. Were you under any kind of training program?
A. No, sir.
Q. You just were going to be an apprentice? At that same time you were operating another business?
A. That's what happened, yes, sir.
Q. Well now, did you work for him at day time or night?
A. Day time only.
Q. When did you run your business?

A. My business was tapering out at that time. I used to take a few hours off in the morning to do my collecting and soliciting.

Q. What were you on, a candy route?

A. Yes, sir.

Q. How much were you making off the candy route?

A. I was losing money, that's why I wanted to get away from it.

Q. Were you independent in the candy route?

A. Yes, sir. Mr. McAfee of McAfee Candy was the one that let me have a try at it.

Q. How long did you work for him?

A. I didn't work for him. I worked for myself, but he loaned me enough candy and premiums to get moving, of which I reimbursed him before I left.

Q. I see. Well then you didn't have to pay any income tax there, did you. You didn't have a withholding tax?

A. No, sir.

Q. And you didn't have any social security there, did you?

A. No, sir.

Q. And you didn't pay any and neither did Mr. Tomley on your job that you were working with him on?

A. No, sir.

Q. Did you report these payments that you say Mr. Tomley was making—that's this Mr. Tomley over here, isn't it?

A. Yes, sir.

Q. Did you report them as income?

A. I believe I did. I'm not sure just how I filed that year.

Q. Did he give you one of these slips that told you how much you had earned as income that year?

A. I don't believe he did.

Q. You know how he treated you on his books as to whether or not you were an employee or not?

A. No, sir.

Q. Did you actually work for Mr. Tomley out there eight months?

A. Yes, sir.

Q. Now when did you first start going thru this materiel of Mr. Tomley's?

A. I would say—

Q. To segregate it?

A. I would say about June, 1954.

Q. How long did you work in setting that warehouse up?

A. Well, it hadn't been completely set up when I left. Setting up a warehouse has a lot of phases, setting up inventory, setting up numbers and posting these and keeping a record of what came in as I inventoried it, and a good many things have not been inventoried yet that I know of.

Q. I see. Now you never had any experience in this before, but you were the man that was going to set up the warehouse under his supervision, and you were the only employee as I understand it?

A. Yes, sir.

Q. Did he have any other employees there?

A. From time to time he would hire laborers.

Q. But nobody that knew anything about the business other than the labor?

A. Not to my knowledge.

Q. What did he hire laborers for?

A. Heavier work.

Q. Were they under your control?

A. Usually they were under Mr. Tomley's verbal messages to me which I just passed down the line.

Q. Tell me how you divided this warehouse up out there?

A. We had one end set up, which would be the South end of the building, I believe, was set up for receiving, where the, er, sorting of the stuff would happen.

Q. And you did all of the sorting?

A. Yes, sir.

Q. All right.

A. The other end of the warehouse, the oppostie end which was the largest room in the warehouse was set up for bearings, reconditioning bearings. We had washing machines there to wash bearings. We had the pump set up so we could pressure, put the degreasers thru pressure, and so forth.

Q. Was that there before June or after?

A. Well, the building was there. We were only inside a room but we were building shelves to accommodate them and get them off the floor. I think they were probably still on the floor.

Q. There were shelves there before you went there?

A. Just a couple. I built more.

Q. In other words this whole thing kind of blossomed out after you got there?

A. Yes, sir.

Q. Now I'll ask you in June did you have your room set up then or your place that you put these platinum pointed things in?

A. We had a small room right at the dead center of the building, which was shut off from all of the other rooms, which I called the automotive room, which we didn't have much in automotives and that's

where I put any of these materiels that Mr. Tomley told me to put in there.

Q. When was that room installed there?

A. When we first got our automotive lot, bought our first pile of automotive supplies from surplus at Warner Robins.

Q. When was that?

A. I would say roughly that was about in July.

Q. July, 1954?

A. Yes, sir.

Q. And what did you buy generally in that first automotive lot?

A. There were some axels in it, there were some brake bands in it, we had some rods in it, brake rods. I believe there was a couple of voltage regulators in there, couple of coils. I just—it was quite varied. I mean there was a little bit of this and that, and not too much of any one item in the lot.

Q. How much did that lot cost you all?

A. I don't know.

Q. Did you go pick that lot up?

A. Yes, sir. I didn't pay for it though.

Q. I see. And the price wasn't on the slip that you saw?

A. Yes, sir. I ignored the price because I didn't have to pay it.

Q. Sir?

A. I ignored the prices on these sheets because I never paid it.

Q. You just didn't want to learn anything about the prices?

A. I didn't have anything to do with it so I didn't learn it.

Q. I see. And did you build that room in there or was that room already in the building?

A. The room was in there with a couple of shelves. I added shelves to it.

Q. And you all decided that's where you would put the automotive stuff?

A. Mr. Tomley decided that.

Q. Well now, how big was that room?

A. I would say that room was about 8 x 8.

Q. 8 x 8, to house automotive parts in? How big a supply of automotive parts did you all carry?

A. It was, to my knowledge, the only lot that we had ever got of automotive parts.

Q. Did you have any trouble filling up an 8 x 8 room with them?

A. We had room left over when they put them in there.

Q. Had room left over in an 8 x 8 room? Now were those particularly valuable parts?

A. The automotive parts?

Q. Yes, sir.

A. No, sir. I wouldn't say so anyway.

Q. Why did you put them in that little room away from everything else?

A. To keep them separated from everything else. The bearings were at one end to separate them from the automotive room. I mean that's the only reason I had.

Q. Now then, you found later on another use for that room and that was to put these platinum pointed parts in, didn't you?

A. Yes, sir.

Q. Now, when did you find that to be a good use for that room?

A. Because it had only one entry way to it, right to the front, had one door, one lock.

Q. When did you all decide to use that for platinum pointed parts?

A. When we first had our platinum.

Q. When was that?

A. I guess it was that time when we found the springs, I assume.

Q. Well, you hadn't seen any platinum out there up until then, had you?

A. No, sir.

Q. It had been an automotive room?

A. I don't think I would know it up until then.

Q. Sir?

A. I didn't know what platinum was up until then.

Q. Where are you from, Mr. Lenteni?

A. The only platinum I had seen was on a ring, sir.

Q. Sir?

A. Only platinum I had seen before that was on platinum rings.

Q. Where are you from?

A. Boston, sir, originally. Right now, Miami.

Q. Well, in Boston and Miami they have platinum, don't they?

A. I guess so.

Q. Now up until the time you ran into all these springs you hadn't seen any platinum out there at all?

A. Not to my knowledge.

Q. Well, in retrospect, you've seen a lot of platinum since then, in retrospect do you remember having seen any?

A. No, sir.

Q. So the first time you saw or heard tell of platinum in relation to Mr. Tomley was in September, 1954?

A. Well, prior to that we had a few, er, magnetos, which I understand have platinum breakers in them.

Whether these did or not I don't know.

Q. How many magnetos?

A. I would say about eight.

Q. Eight magnetos?

A. Yeah.

Q. Prior to September? How many of those little things that you were looking at up there a while ago, that little blue spring that you were talking about, how many of those in a magneto?

A. Well, I'm given to understand some have one and some have two.

Q. If they had four that wouldn't be but 32 of them would it in the magnetos?

A. No.

Q. And everything else came up after September, 1954?

A. Yeah.

Q. Now you say the first thing you discovered was a thousand and twenty eight of those little springs?

A. That's right, sir.

Q. And you discovered those either in the first or the second week of September, 1954?

A. Yes, sir.

Q. Well now, just tell us about that shipment. What shipment was that in? You say you brought it from the base?

A. That shipment had come in about two months prior to the time I inventoried, so it would make it about July, and we had opened one box when we first got it, we opened one to see what was in it and then piled them in the front room one on top of the other.

Q. What was in that shipment?

A. Blocks.

Q. Blocks?

A. Mag blocks.

Q. How many mag blocks were there?

A. They ran about 320 per box. There were 9 boxes of them.

Q. What else?

A. That was all in that particular lot that I remember.

Q. Nine boxes with 320 to the box of ignition blocks?

A. Yes, sir.

Q. And you opened one box?

A. A card board box which was by itself and it was not in a wooden container.

Q. Yes, sir, and you opened one box. How big was that box, about?

A. About two foot. No, a little better than that. Maybe about a yard square. I would say, about three feet square.

Q. About three feet square?

A. Three foot cubed, sort of.

Q. There were nine of those, as I understand it?

A. Yes, sir.

Q. Nine of 'em, three foot cubes, Is that correct?

A. Yes, sir.

Q. Were those packed for overseas shipment or not?

A. Not to my knowledge of what packed for overseas shipment means. They were merely in cardboard cartons.

Q. Were they loose inside the cartons?

A. They had a small box—we had some that were loose but most of them were in small pasteboard boxes.

Q. Well now, this one box that was three foot cubed, did it have any of these springs in it, that first one you opened?

A. No, sir.

Q. Was it an original box?

A. I couldn't be sure of that.

Q. Was it a wooden box?

A. No, sir, it was a cardboard container.

Q. And you had brought that—you remember having brought that box from Warner Robins?

A. Yes, sir.

Q. Now when you went into that box, why did you go into it?

A. Curiosity, wanted to see what was in it.

Q. How big were those things that you are talking about, those ignition blocks?

A. About an inch and a half in thickness and—it's been a long time ago—I would say about two and a half or three inches long and about an inch and a half thick and an inch and a half wide, in a sort of a crescent shape.

Q. What were they for?

A. They are used as I understand to carry your wires to the spark plug magneto.

Q. Who did you all sell those to?

A. I don't believe we sold them, to my knowledge, while I was there.

Q. Was there any platinum on them?

A. Again, not to my knowledge.

Q. That was 2880 of those that you had bought, the nine boxes of 320 each?

A. Uh huh.

Q. What was the occasion for your opening the other boxes?

A. I had, as I said, when we inventoried, when I got to a certain item we would inventory the item. We would inventory all of whatever items we were going thru. We set up shop in what I considered the

chronological order, with aircraft parts, and then we broke it down to components and anything that had anything to do with magnetos that day I was inventoring them—

Q. Yes, sir, but you knew you had nine boxes of 320 each there and you had opened one and you saw what was in it. Now I want to know why you were opening the other nine boxes.

A. To take inventory.

Q. Didn't it have it tagged on it what it was? Didn't you have your bill where you bought nine boxes of 320 each?

A. I hadn't inventoried the blocks up until that time either.

Q. That's what I'm talking about. Why did you have to go into them, break the crates. If you had sold them you would have passed them on in the original crates.

A. Well, you don't go by what's on the box.

Q. You don't?

A. No, sir. You open them up.

Q. So you opened all nine of those boxes?

A. Yes, sir. Took them out and counted them and put them back in the boxes.

Q. Put them back in those same boxes?

A. Yes, sir.

Q. And it was in the course of doing that in September after you had had them there for two months that you found the springs?

A. Yes, sir.

Q. What kind of boxes were the springs in?

A. In a smaller pasteboard carton.

Q. Which one of the boxes that you opened up were they in?

A. That's a good question. I don't know.

Q. You are the one that opened it?

A. Yes, sir.

Q. Wasn't in the first box, was it?

A. The one we had already opened? No, sir. Putting it that—no, I couldn't be sure which one it was in.

Q. Weren't you surprised when you ran into those things?

A. No, sir.

Q. You weren't? Did you run into any other stuff in there?

A. Other than the springs.

Q. You run into some spark plugs in there?

A. No, sir.

Q. You run into any distributor parts in there?

A. No, sir.

Q. Just run into those springs.

A. Yes, sir.

Q. Were they all in one box?

A. In two boxes.

Q. Were the two boxes in the same box?

A. They were both in the same box.

Q. I see. What was the size of those two boxes?

A. They are about 6 to 10 inches square.

Q. What were they marked?

A. They were not marked if I remember correctly. I didn't see a marking on them.

Q. Well, could somebody have put them in there after you brought them from Warner Robins?

A. I don't see how they could have got in there because they would have had a baler and put baling around them afterward. Of course they could have brought a baler with them, I don't know, but it's highly improbable.

Q. Were they nailed up?

A. They were nailed, the wooden cartons were nailed.

Q. I thought they were cardboard boxes?
A. Inside of the wooden boxes.
Q. They were wooden on the outside, carboard on the inside? Is that correct?
A. Yes, sir.
Q. Now what did you do with these things when you ran into them?
A. Well, I kept one of them aside and when I went to dinner I saw Mr. Clott and asked him what they were.
Q. What did he say?
A. He said, "It's part of a breaker".
Q. Then how long after that before you went to Mr. Tomley?
A. Mr. Tomley, on that particular day, was away for the day, and I merely set them aside. I think I put them on or under the desk and Mr. Tomley saw them, I believe, the next morning.
Q. He saw them the next day?
A. Yes.
Q. That was in September. What was his comment when he saw them?
A. No comment.
Q. Did he tell you that they cost the Government $1.75 a piece?
A. No, sir.
Q. Did you tell him they weren't supposed to be in that shipment?
A. No, sir.
Q. Did he tell you they were not supposed to be in that shipment?
A. No, sir.
Q. Then what did he do with them?
A. He must have put them in the middle room because that's where I saw them next.

Q. You are sure it's the same box that you saw next?

A. I couldn't swear to a thing on that. They were in the same containers, same ones I had seen, but I didn't mark the containers to know whether it was them or not. I had put a slip of paper with a column on each box.

Q. I see. There was 1028 of them?

A. Yes, sir.

Q. And they went into the automotive room?

A. Yes, sir.

Q. How long did they stay in the automotive room?

A. I don't know.

Q. When is the last time you saw them?

A. I dont know that either.

Q. When did he sell those?

A. I don't know when he sold them. See, I didn't handle the sales end. I just handled the receiving and putting in and inventory.

Q. I'll ask you, did he sell those in such an urgency to where he called over long distance telephone to sell them?

A. I don't know that sir.

Q. And had his money wired to him?

A. I—

Q. You know?

A. No, sir.

Q. But you say they stayed in there from September—you know there was 1028 of them in there in September. You don't know whether he sold them the next day or in December or whether he ever sold them?

A. No, sir.

Q. What else did you run up on, in the way of materiel that wasn't supposed to be in stuff that Mr. Tomley bought?

A. Well, whether he was supposed to buy them or not I don't know. We would even run into empty boxes that were sealed there, and those we had to discard.

Q. I see. Now, what about these G. E. breakers? You said something about you were shipping out some cams and ran into a bunch of G. E. breakers.

A. Yes, sir.

Q. Tell us about that. When was that?

A. That was about the same period.

Q. And what was happening then? You were shipping out some cams?

A. Yes, sir, he had given me an address to ship out a box of cams.

Q. How many?

A. The cams ran—umm—about 3000.

Q. 3000 cams?

A. About 3000.

Q. What kind of cams?

A. Er—they're breaker cams, I think. I'm not sure. I had only seen one set and that was it.

Q. How big were they?

A. They are a series of four. They look like washers, series of about four washers.

Q. Where were you shipping those 3000 cams?

A. I don't honestly remember.

Q. Where had you gotten those cams?

A. They came from the Base.

Q. How long had it been since you had gotten them from the base?

A. I believe about three weeks prior to the shipping of them.

Q. Had you put them in inventory?

A. No, sir.

Q. Where were they?

A. They were in the main room and I took them—we had a room set up with empty boxes and packing and so forth, and I had them in there. I had taken them in there that morning. That was my shipping—

Q. Were they bought as a thing by themselves, 3000 cams?

A. I believe they were, I'm not sure.

Q. How big were the boxes on those?

A. That box was about 18 inches high, and I would say about 18 wide, and about 3 feet long.

Q. It was a long box?

A. Fairly long.

Q. About half as wide and half as deep?

A. Yes, sir.

Q. Was that a wooden box?

A. Yes, sir.

Q. Did it have a paper box inside of it?

A. This paper like stuff, that overseas wrap.

Q. It was packed for overseas shipment?

A. I guess so. I assume so.

Q. Was that the way those other things were packed for overseas shipment?

A. The blocks?

Q. Yes, sir.

A. No, sir, they didn't have that liner inside of the wooden cartons.

Q. Just had a box inside of a box?

A. Yes, sir.

Q. Now on these cams was there just one box?

A. Yes, sir.

Q. How many little boxes were inside of the wooden box?

A. Well each set of cams came in a little envelope. some better than 3000 of them in there.

Q. And they were all just in the wooden box?

A. Just laying in there.

Q. With the overseas covering around them?

A. Yes, sir. Well, the overseas covering—I don't know—it could have been on the lid when I opened the lid up, the top of it could have come off. They do that a lot of times. It's like a large envelope inside of the box, to the best of my knowledge, and it's sometimes glued to the top of the carton some way.

Q. When you got that materiel in did you open it and examine it?

A. I was told to ship it out. I hadn't actually inventoried it and I was told to get it ready for shipping. I put some more bands around it and prior to shipping it I pulled off an envelope that was stamped on the side of that box that said there were breakers inside, and when I showed that to Mr. Tomley he said "better open it up and take a look", and I did, and I found what I considered to be new G. E. breakers inside of the box.

Q. I see.

A. Plus the cams. They were also in the box.

Q. When you brought that box from Warner Robins did it have the envelope on the side?

A. Yes, sir, I believe it did.

Q. Why didn't you pull it off and look in it then?

A. Because I wasn' shipping it, I used to trim all these labels and tags and things off when I shipped them so there wouldn't be any confusion in shipping. We usually ignored those.

Q. I see, but on your other stuff when you first got it in you immediately opened it to be sure what it was. You got a sample of the block out of it. I wonder why you didn't get a sample of this when you first took it in there?

A. Well, it was crated.

Q. The other was crated too.

A. But it wasn't in a wooden container.

Q. I thought you said the others were?

A. I said one was loose, one was out of the box. That's where the nine came from. There were two cardboard containers to each wooden box, and one was out in a cardboard container.

Q. Wait. Let's go back. I want to know if these nine boxes, if it's your testimony that these nine boxes that were supposed to have had blocks in them were wooden boxes or not?

A. Er, if I can describe the boxes it might help you on that. Each wooden box had two cardboard containers in it, which would be approximately half of the size of the wooden boxes. Fact is they—

Q. Well, they were then all nine of them in wooden boxes?

A. They couldn't have been. One of them was taken out of the wooden boxes. There was an odd box. One was an odd box.

Q. There were four wooden boxes then?

A. Yes, sir.

Q. I see, and one odd one and you opened the odd one?

A. Just out of curiosity.

Q. Yes, sir. Now, even though you all had an order and had an active sale on these cams there hadn't been any sampling made and they had been around there around two weeks? Is that correct?

A. Yes, sir.

Q. Now what did you find in there? How many G. E. breakers?

A. The G. E. breakers, to the best of my recollection, I would say there was about 55 in there. These I taken out of the box, put them in the desk drawer.

showed them to Mr. Tomley and we put them back in the automotive room again.

Q. Now at that time you had 1028 of the springs and 55 G. E. breakers in with the automotive stuff. Is that correct?

A. Yes, sir.

Q. Now I'll ask you what else you put in there?

A. Spark plugs.

Q. Well, let's get down to G. E. breakers. How many more G. E. breakers did you discover in packages?

A. About three.

Q. Three? That would make 58 in all?

A. Yes, sir, to the best of my knowledge.

Q. And how many other springs did you find?

A. We had some springs which, er, about, I would say about 6 or 7 springs from magnetos which were all smashed up.

Q. That would make about 1035, something like that?

A. Something like that, yes, sir.

Q. Now, did you take the springs out of any magnetos that weren't smashed up?

A. No, sir.

Q. Now then, these scintilla breaker assemblies, did you find any of those?

A. I didn't find any assemblies, the scintilla breaker assemblies, er, I've seen 'em, but I didn't find 'em.

Q. Where did you see them?

A. They were in—er—Mr. Tomley had made a swap with some materiels for some.

Q. Who did he swap with?

A. I believe it was a Mr. Roberts.

Q. The man that's dead?

A. So I understand.

Q. Did you see him swap with him?

A. I was there when he got the box. I didn't know what they were at that time.

Q. How many did he swap him for?

A. I don't know that either.

Q. You were there?

A. I didn't inventory it.

Q. When you went back he put them in the automotive room, didn't he?

A. Mr. Tomley did.

Q. Was there any secret about you looking at them?

A. No.

Q. They weren't in a nailed up box, were they?

A. No, sir. They were in a small—if I remember—small carton and the top was pushed in so you could see them.

Q. How many would there have been in there, roughly?

A. I have no way of knowing.

Q. You are a parts man, aren't you?

A. No, sir. That's been my first experience with parts, working there.

Q. When did that happen? When did he get them from Mr. Roberts, the man that has since died? When was that?

A. Strictly a guess, I would say the first of October.

Q. The first of October?

A. No, I don't believe it was after October. I think it was toward the end of September or may be the first of October.

Q. Where did that happen?

A. At Mr. Roberts place of business.

Q. Where is that?

A. That's on the new highway, Broadway, I believe it's called.

Q. What was the occasion that you all went out there?

A. Mr. Roberts had seen some webbing we had and we took a run down there with the webbing in order to make a sale, and Mr. Roberts suggested trading something and Mr. Tomley traded.

Q. Did Mr. Roberts give him an invoice for it?

A. I don't know, sir.

Q. You were there weren't you?

A. I was there but I wasn't in there all the time. I wasn't in on all their talking. I never hung around when people talked. I used to walk away, get nosey and see what's around and try to make heads or tails of something, or I was running an errand, or anything could have happened so that he could have got an invoice and I wouldn't know about it.

Q. Yes, sir. Well now, I would like to know, if you can tell me, approximately what Mr. Tomley got down there, because this is one of the places that he got materiel that he is accused of getting illegally. I would like to know this in detail. How big was the box?

A. The cardboard box?

Q. The box, whatever kind it was.

A. That—er—I would say about—er—about a foot square and about a foot deep, about a foot cube or maybe about 18 inches. It was more tall than square. I would say about 18 inches high and maybe a foot square.

Q. About 18 inches high and a foot in the other direction, 18 x 12 x 12? Now what time did you go out to Mr. Roberts?

A. I would list it about early afternoon.

Q. You remember the day of the week, anything that could identify it?

A. No, sir, I don't.

Q. And you say it was sometime in October?

A. No, I say around the first of October or the end of September.

Q. Who was there besides Mr. Roberts?

A. There was a man there, I don't know who it was now.

Q. Who?

A. I don't remember, sir, some one I'm not familiar with, because I had spoken to him outside, while he and Mr. Tomley were talking, but I don't recall who it was, whether he was employed there or hanging around there or not, I don't know.

Q. Did you all take your webbing with you when you went?

A. Yes, sir.

Q. How much webbing did you take?

A. I'm guessing in poundage it was roughly about 150 or 200 pounds.

Q. Was Mr. Roberts a salvage dealer?

A. To my knowledge he was, sir.

Q. How much salvage did he have at his place?

A. He had what would be considered a small place. It was more retail, it seemed to me, than anything else.

Q. How much was your webbing selling for?

A. I don't know, sir.

Q. You don't have any idea at all?

A. No, sir.

Q. You didn't do any selling?

A. No, sir.

Q. Now you and Mr. Tomley went down there by yourselves, I take it?

A. In Mr. Tomley's truck.

Q. In his truck, and you went down to Mr. Robert's place one afternoon, early afternoon, and you carried 150 or 200 pounds of webbing and what happened after you got there?

A. Mr. Tomley went in and talked to Mr. Roberts.

Q. Did you go in?

A. I was at the door way and looked in, and then I just hung around.

Q. And what did they do?

A. Well, they talked a while. I guess they talked a while. I had my back turned around. I wasn't particularly paying any attention to what they did, which I never did. Mr. Tomley tells me to take this box out to the truck, I take it out, that was it!

Q. You took the box out?

A. And put the webbing in.

Q. Did you see any money passed?

A. No, sir.

Q. How heavy was that box?

A. I don't know. I would say about 3 pounds, 4, 5.

Q. Three or four or five pounds? Could it have been 30 pounds?

A. I suppose it could have been 30 pounds. I don't remember that much about it frankly, as far as the weight is concerned. I don't know. I didn't pay any attention.

Q. But you did pay enough attention to it to know what was in it?

A. Well, I had looked at it when I took it out.

Q. And what was in it?

A. What I believe are bases for breaker assemblies.

Q. Sir?

A. Bases for breaker assemblies.

Q. Bases for breaker assemblies?

A. I think that's what they call them.

Q. Did they have any platinum on them?

A. I didn't know at that time. I still don't know whether they had or not.

Q. Was that breaker assemblies or bases for breaker assemblies?

A. I think it was bases.

Q. What did he do with those?

A. Put them in the automotive room. That was the last I had seen of them.

Q. Now you had those and you carried them in your hand there, that box you say that was about 12 x 12 x 18, and you say afterward you looked at one of them and it appeared to be a base for a breaker assembly?

A. Yes, sir.

Q. Now do you have any idea how many of them there were?

A. No, sir.

Q. No idea at all?

A. No. They were just jumbled in there. I could guess at any amount and I—

Q. Well, when you inventoried them how many did it show?

A. I did not inventory them.

Q. Why?

A. It didn't come under my inventory, that's all.

Q. What was your inventory, what did it embrace?

A. It might have embraced that but like the cams, if it was shipped out before I inventoried it, it would have just been shipped out! I mean I wouldn't know about that. I couldn't inventory everything.

Q. But when you moved them into that little automotive room didn't you inventory stuff as you moved it in there?

A. No, sir, not necessarily. Automotive stuff was in there quite a while. I don't think it's actually been inventoried yet.

Q. When were those shipped out?

A. I don't know that either. They were there to the last of my knowledge.

Q. They were there when you last looked?

A. Yes, sir.

Q. What about motor gun timers? Did you pick some of those up?

A. I don't even know what a motor gun timer is.

Q. Motor gun chargers? You don't know what they are?

A. No, sir.

Q. I don't believe you were there after December though, were you?

A. No, sir.

Q. Now let's go back to the spark plugs for a minute or two. Did he put his spark plugs in that little room?

A. Yes, sir.

Q. All spark plugs or just platinum tipped?

A. Well, for a while we had all spark plugs in there. We sorted out a group of them later on. I don't know one from the other, and he showed me.

Q. Did you separate the platinum tipped ones from the salvaged ones?

A. I did. From any groups that we got why I would separate them afterwards, but I had put them all together prior to that.

Q. I see. Now how many platinum tipped spark plugs did you find?

A. That again I don't know. I didn't inventory them. I put them in a box in there. That's all. They would come in twos and threes sometimes a half a

dozen in a lot. Had quite a number that came in from Cleveland, I remember.

Q. How many from Cleveland?

A. I would hazard a guess, maybe 5 or 6 or 700 of them.

Q. I see. Did he ever get as many as 1500 in there?

A. Could have, but I don't—er—I wouldn't say that as long as I've been handling it, er, I don't believe I've seen many more than a thousand, around a thousand, to my knowledge.

Q. Well, did he sell those off pretty shortly after getting them or not?

A. I think he sold some. I don't recall the transaction at all, because as I say all I handled was the incoming, sorting, etc. If I shipped a box, lot of times I knew it was there and lot of times I didn't.

Q. So I believe your testimony is that you discovered a thousand springs?

A. Yes, sir.

Q. Along in September in a shipment, in a buy, that you all had made, and that you told Mr. Tomley about it, certainly by the next day?

A. I would say yes.

Q. And that those things stayed around there to your knowledge for some little time?

A. To the best of my knowledge.

Q. Did you tell him what shipment they came out of?

A. Yes, sir.

Q. Was he surprised that they were in that shipment?

A. I didn't notice any undue surprise, no, sir, or whether he was surprised didn't show; I don't know.

Q. I see. That's the first thing you know about it, and the second thing is that he bought some bases for distributor assemblies in a trade with this dead man, Mr. Roberts?

A. Yes, sir.

Q. But you don't know how many?

A. No, I wouldn't know, wouldn't want to guess at how many.

Q. You never inventoried them?

A. No, sir.

Q. And so far as you know they stayed around there all the time you were there?

A. So far as I know.

Q. And the third thing you know about is 55 G. E. breakers?

A. Yes, sir.

Q. And you said they could have been three more taken out of other shipments, which would have made 58 in all. And the fourth thing you know about is some spark plugs?

A. Yes, sir.

Q. That you say you would get anywhere from three to six, I believe—

A. Yeah, it would—they seemed to be—it was like the lots were salted, whether they were trying to boost up prices on em or just had no other way of getting rid of them, I don't know.

Q. Were they coming from Warner Robins?

A. I only handled from Warner Robins. Only transportation I did was from there to our place.

Q. During that time how many shipments of spark plugs did you handle from Warner Robins?

A. Shipments?

Q. Purchases, lots?

A. I haven't handled any purchases. Buying spark plugs you mean?

Q. Going out there and getting them for Mr. Tomley?

A. I didn't go out and get anything for Mr. Tomley but the lots he gave me to pick up.

Q. That's what I'm asking you. How many of those there were?

A. I don't know of any specific number at all.

Q. You don't remember how many times you went out there and got spark plugs?

A. I—what I'm trying to bring out is that when I went out to get a lot, I didn't go to get a lot of spark plugs or anything else. I just picked up a lot of boxes and these spark plugs were found in them.

Q. How many lots did you go out to get that spark plugs were in, during the six months that you worked there?

A. That's too big a test of my memory. I wouldn't say. I would say about half of the lots that I picked up.

Q. How many lots did you pick up?

A. I don't know.

Q. You won't make any estimate?

A. I wouldn't like to, no, sir, because I honestly don't remember.

Q. Did Mr. Tomley ever buy any other platinum pointed stuff to your knowledge.

A. Not to my knowledge, sir, no.

Q. Did he ever sell any other to your knowledge?

A. To my knowledge no, I don't know.

Q. Mr. Lenteni, I want to ask you, did you ever see any of these in that place of business out there?

A. I don't recall sir. I don't recall seeing any. To my knowledge I haven't seen any, not with that container, or anything else. It says bearings in it. I don't know what't in it.

Q. I want to ask you, this bearing right here, did you ever see that bearing in quantities out there?

A. We have handled bearings there. We have bushel baskets of them, and I don't think I could at random give you three or four numbers on it frankly speaking.

Q. Well, I'm asking you—

A. It looks like bearings we have.

Q. I want to ask you did you accidently run into any of these out there that wasn't supposed to be in lots that you purchased, either the one that's there, the square one, or the ones that's out of the wrapper? I want to show you both of them.

A. I do not remember ever seeing this particular wrapper, which is what I'm looking at, and as far as these are concerned, we have bearings to that size to my knowledge. We had bearings out there; how many I don't know.

Q. Did you get those on bid out at the air base?

A. We got many bearings from the air base and quite a number from Cleveland. What, exactly, comes from whom—we put them together and I never did inventory bearings.

Q. Did you ever get any of those from Mr. Bilderback?

A. I haven't spoken to Mr. Bilderback. I don't know whether he has any for sale or not.

Q. That's not what I asked you. I said did you ever get any from him?

A. No, sir.

Q. Did Mr. Tomley to your knowledge ever get any from Mr. Bilderback?

A. To my knowledge, no, sir.

Q. Did he ever trade for any of those?

A. I don't know sir. To my knowledge I don't know a thing about this bearing.

Q. Did you keep that bearing in the same room that you kept your platinum?

A. The only—we had a couple of automotive bearings in the room, and that's all.

Q. I asked you, did you have that bearing?

A. No, sir.

Q. None of that bearing were ever in that room?

A. No, sir, not to my knowledge.

(Witness excused.)

MR. JOSEPH TOMLEY, the Defendant, having your individual property you paid your individual

Direct Examination.

By Mr. Miller:

Q. You are Mr. Joseph Tomley?

A. Yes, sir.

Q. Mr. Tomley, where are you originally from?

A. Cleveland, Ohio.

Q. How long have you been down this way, in Macon, Georgia?

A. I think I came down here in February of 1954.

Q. How old a man are you?

A. Forty nine last March.

Q. Now while you were up in Cleveland just prior to coming down to Macon, Georgia, what sort of business were you in?

A. Surplus.

Q. And when you say surplus do you mean buying, purchasing, war surplus, air corps, navy, or any type of armed services surplus?

A. Yes. I was even connected with other concerns.

Q. I didn't hear that.

A. I was connected with other companies at various times.

Q. Did you have any interest in a ball bearing business of any nature?

A. Yes, sir.

Q. Did you, as a result of your business in Clevelant, make trips around, and among those come to Macon, Georgia and Warner Robins Air Materiel Area?

A. Yes, sir.

Q. While you were connected in Cleveland did you make purchases on behalf of yourself or your company from Warner Robins?

A. From the dealers around Warner Robins.

Q. From the dealers?

A. Yes, sir.

Q. Well, now, while you were in Macon, around Warner Robins, making purchases from dealers, did you see any merchandise or run across any situation that interested you or prompted you in moving down this way?

A. On account of there was a larger quantity of merchandise available around here than most any other part that I knew of right at that particular time.

Q. Is that the reason you moved from Cleveland to Macon?

A. One of the reasons.

Q. And then when you moved down here where did you move to?

Where did you start living?

A. I stayed at the Central Hotel in Macon.

Q. And that was in '49 when you first came?

A. No. '54.

Q. Oh, 1954?

A. Yes, sir.

Q. 1959 is when you started in business in Cleveland, or where did I get '49 from?

A. I would say '46 or '47.

Q. All right sir. We've got the date straight now. Well now, when you first came down to Macon, what was the first type of enterprise or vocation you went into? Was it surplus, dealing in surplus?

A. Yes, sir.

Q. And with whom were you connected?

A. Quality Supply.

Q. Was that a trade name for Mr. O. M. Herndon?

A. Yes, sir.

Q. Was he a surplus dealer here in Macon or at Cochran Field, Warner Robins?

A. He maintained a warehouse at Cochran Field.

Q. That's between here and Warner Robins, I believe.

A. Yes, sir.

Q. Well now, when did you go with Mr. Herndon, approximately?

A. I would say in February and March of, 1954.

Q. Well now, when you left Cleveland did you leave behind you any accumulation of any sort of surplus items?

A. Yes, sir, I left a warehouse on Edna Street.

Q. How long did you remain connected or associated in some form with Mr. Herndon and Quality Supply?

A. Oh, I think about, until around the first of May.

Q. Well, while you were associated with Mr. Herndon did you purchase any merchandise from Warner Robins surplus disposal division?

A. I purchased thru his company and, er, some of it was all my own, some of it Mr. Herndon had an interest in.

Q. In other words the way you operated you purchased thru Quality Supply's name, some of it was your individual property you paid your individual money for, and others you were in some sort of sharing arrangment with Mr. Herndon?

A. Yes, sir.

Q. And you stayed with Mr. Herndon and had that arrangement until about when was it sir?

A. First of May, 1954.

Q. Then what? Did you go into business on your own?

A. I rented a warehouse over there and maintained that warehouse.

Q. And while you were with Mr. Herndon did you accumulate any interest in some of the surplus property that you had not sold when you left?

A. I went into ball bearings and I had some merchandise in his warehouse.

Q. Did you have a settlement with him in a division of the property?

A. Yes, sir.

Q. And about when was that?

A. I would say around May.

Q. And then did you make purchases out at Warner Robins in your own name, Joseph Tomley?

A. Yes, sir, Joseph Tomley.

Q. Had your own warehouse?

A. Yes, sir.

Q. How often would you say, Mr. Tomley, that during the summer of '54, just roughly, would you go out to Warner Robins to make purchases?

A. Oh, I would go at least once or twice a week.

Q. Well now, did you move your warehouse, that is the contents of your Cleveland warehouse down here to Macon?

A. I think around the tail end of October, 1954, I did.

Q. And can you tell us approximately, by giving us the size of the load, or the size of the truck, just how much of that equipment you brought down from Cleveland?

A. A trailer load, about a 32 foot trailer.

Q. Did you bring down any ball bearings with you?

A. I would venture to say that there was at least five tons of ball bearings, 10,000 pounds, somewhere around that neighborhood.

Q. How many ball bearings, bearings that are ball bearings have you got out there in the warehouse now, would you say?

A. I would say in regard to the ball bearings that we have out there today at least 200,000.

Q. Two hundred thousand?

A. Of various kinds.

Q. Have you got any objection to anybody going out there and looking at them? Mr. Powell or anybody else?

A. No, sir.

Q. Well now, when you came down to Macon, what was your idea, what sort of business were you going into, what sort of a man do you call yourself? What's your ultimate objective in this ball bearing business?

A. I have always wanted to take a used ball bearing that the aviation people would reject because it doesn't meet their specifications, recondition it, and put it into a position where it could be used in the

commercial field. In other words, reconditioning ball bearings.

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Q. Mr. Tomley, is that one of your business cards, or calling cards or advertising card or whatever you call it? That's Govt. Ex. No. 2, I believe.

A. I knew everybody would call me a Yankee and thinking about the card one day, coming down, that I had to have a card printed, I just thought I would put that on there on account of the name.

Q. You figured if these Southerners would associate Joe Tomley from Cleveland with Robert E. Lee you might get along and do some business down here, huh?

A. (Laughed.)

Q. Well now, did you hand those cards out?

A. These cards were handed out to most anybody. I believe many people asked me for that particular card just to rib me about it.

Q. Well now, in your inventory that you brought down from Cleveland what did that consist of besides these ball bearings?

A. I would like to explain that a little bit. When I was connected with World Surplus I traveled around the country. Many a time you would pick up a sample, spend a couple of dollars for an item that you saw, you would have it in your car and take it to your own warehouse and put it over there and leave it there. I had material stored in that warehouse that has been bought in various parts of the country on various trips, and it was an accumulation of material. You could find most anything and everything in it. Primarily there were a lot of ball bearings in there, some—

Q. Were there any aircraft spark plugs in there?

A. There was, yes.

Q. Were there any breakers?

A. There may have been a few magnetos that had breaker assemblies in it.

Q. Is that where breakers come from, out of magnetos?

A. Some of them. Some of them are sold as is. Lot of this stuff I didn't know anything about it until I came down here myself.

Q. Well, I believe you are now connected with C. T. Sales, which is a corporation?

A. Yes, sir.

Q. And when was that corporation formed?

A. In February.

Q. Was that transaction that there's been some mention of here, of a sale where you made two or three thousand dollars on it, I forget what it was, was that a C. T. Sales transaction?

A. That was a C T sales transaction, yes, sir.

Q. Was that during the period of the corporation fiscal year that ended February 1, 1956?

A. Yes, sir.

Q. Do you know what the profit of the corporation was for the year ending Feb. 1, 1956?

A. Profit was about $2,000.00.

Q. Two thousand?

A. Around $2,000.00.

Q. Who is your auditor, your bookkeeper?

A. Joe Bruskie.

Q. Over in the Persons Building here in Macon?

A. Yes, sir.

Q. Well now, in your purchases—there's been a lot of talk here. I'm not going thru all of them, but Im going to show you some of the spot sales here,

and I'm going to show you Defts Exs. 16 thru 19-W and ask you to look at some of those.

(Ten minute recess.)

Q. Look those exhibits over there, Mr. Tomley, that I have given you, those delivery sheets, and I want to ask you a question or two about them, please sir. Did your delivery sheets come from your possession? That is were they in your custody and control before we started this case in Court?

A. Yes, sir.

Q. Do they represent delivery slips or delivery sheets of merchandise that you purchased for and on behalf of yourself, or for and on behalf of C. T. Sales, at Warner Robins, Ga?

A. Yes, sir.

Q. The Air Materiel Area?

A. Yes, sir.

Q. Can you tell us whether or not those purchases represented by those sheets include any platinum pointed spark plugs?

A. I assume that they must have, yes.

Q. Did you acquire from Warner Robins Air Materiel Area in surplus sales out there any platinum pointed spark plugs?

A. Yes, sir.

Q. Did you acquire from Warner Robins Air Materiel Area surplus division any American Bosch springs?

A. Yes, sir.

Q. Is that the number SP 5287?

A. Yes, sir.

Q. Did you acquire from Warner Robins Air Materiel Area surplus division any of these delco motor gun charges?

A. I bought some from Quality Supply and I have bought some after the indictment from the field.

Q. Is what you are talking about there Govt. Ex. No. 6?

A. Yes, sir.

Q. Did you acquire any platinum pointed spark plugs from O. M. Strickland?

A. Yes, sir.

Q. You recall the testimony here of Mr. John Thomas who, I believe, bought, according to his testimony, some 20,000 scintilla breakers?

A. Yes, sir.

Q. Were you present at Warner Robins Air Materiel Area when the bid was awarded to him?

A. When the bid was opened and publicly read Mr. Thomas bid on that lot over $4,000 more than any other bidder. Everybody wanted to know why. Mr. Thomas went down to the disposal yard and asked them to—

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Q. Go ahead, Mr. Tomley. You say Mr. Thomas had bid four thousand more than anybody else to get them and what did he do with them?

A. He went down to the field and asked whoever had charge of it, I believe Mr. Scruggs, to go out there to that particular lot at the black top, bring that materiel in. Everybody wanted to know why Mr. Thomas was so interested in that merchandise, was the first time I believe any other surplus dealer had bid on that particular sale that had a 10-20237 follower in it.

Q. All right sir. Now let's get around to Mr. Andrew Jackson Wright. Did you know Mr. Wright before this indictment was brought?

A. Yes.

Q. When did you run into Mr. Wright? When did you first see him?

A. Driving a truck. Whenever he pulled over to the salvage yard he would stand around there and whoever—generally, all them people that work down there see anybody, any bidders, they speak to them.

Q. Approximately how often did you go down to Warner Robins about that time to the surplus disposal?

A. On an average of at least twice a week.

Q. And what was the purpose of that, to inspect—

A. To inspect the merchandise, whether it's spot bid or invitation bid.

Q. Merchandise that was offered or to be offered for sale?

A. Spot sale came once a week. Invitations came—

Q. Did you ascertain that Mr. Wright brought merchandise over from Class 27 or reclamation, or wherever it was brought from, to surplus?

A. Yes, sir.

Q. Did you see him and ask him to come to see you?

A. Yes, sir.

Q. And about when was that, to the best of your recollection?

A. Right after I saw that there was twenty some thousand followers sold to Mr. Thomas.

Q. And what was your purpose of asking Mr. Wright to come to see you?

A. Due to that stuff, that merchandise not being written up right, no identification, clear identification. I thought I would ask him to come over and if there was any quantity of large materiel coming in there to notify me.

Q. He was the one that was bringing it over there and you wanted him, if any of that materiel you were interested in was coming over there, to let you know about it?

A. Any new materiel that would come in quantities.

Q. What materiel were you interested in, any particular materiel?

A. I would say any ten dash numbers, any two dash numbers, any Bosch merchandise, any ball bearings, new ball bearings coming over, just to give me the numbers.

Q. Any other merchandise you were interested in?

A. Most anything, pumps, anything that there would be quantities of.

Q. Well now what kind of merchandise is ten dash merchandise?

A. Generally Bendix scintilla.

Q. How about two dash?

A. Bendix scintilla.

Q. Well, did he come to see you?

A. He called me up a few times.

Q. When he would call you would he tell you that some of the merchandise you were interested in, pumps or ten dash or two dash, or whatever you asked him about—

A. He would try to give me a number and it never made much sense to me. I would tell him to write it down.

Q. Bring it to you?

A. Bring it if he was coming down town and give it to me.

Q. Did he write down any of the numbers and bring them to you?

A. Yes, sir, he has done that.

Q. When he would call you where would he call from?

A. I wouldn't know.

Q. Well now, did he notify you or inform you of any merchandise that was coming over to salvage which turned out to be correct and you bought it?

A. I wouldn't say yes.

Q. Well, did you ever give him anything for what he was supposed to be doing for you?

A. I may have give him a couple of dollars.

Q. Well, how long did that arrangement go on where he was supposed to let you know when any new merchandise, ball bearings or pumps or ten dash or two dash stuff, how long did that go on?

A. I think around the first part of March or somewhere—the boy started to drinking. He embarrassed me. I told him I didn't want to see him any more. I didn't want him bothering me any more.

Q. Did he come to see you under the influence?

A. Practically every time I saw him the boy was under the influence of liquor.

Q. Did you sever your arrangements with him?

A. I did.

Q. Did you cuss him out?

A. I asked him not to bother me.

Q. When was the last time you saw him, prior to the time you were arrested?

A. I would say not later than the 30th of March.

Q. Thirtieth of March, fifty what?

A. 1955.

Q. And where was that?

A. Down at my warehouse when he came down there. I had told the boy to stay away from me in his entirety because he was drinking and he was just a nuisance.

Q. You heard what he testified on the stand. Why is he testifying to that? You know any reason why he is saying he brought merchandise to you?

A. He has no reason to say it. I never bought any merchandise from the boy. I never encouraged him or anything else. I told the boy to stay away from me. I may have used blunt language to him. Maybe he didn't like it. The only thing I next knew about it I was arrested.

Q. Well now, let's go into exactly what he has to say. I believe he said that he delivered to you some G. E. breaker assemblies, about 50 or 75, for which you paid him $80.00. Is that correct?

A. No, sir.

Q. Is it true?

A. No, sir.

Q. I believe he says he brought you about 15 motor gun chargers and you gave him a dollar a piece for them. Is that true?

A. No, sir.

Q. Then I believe he says he delivered to you some American Bosch springs, about 300, and you paid him $75 or $80. Is that true.

A. No, sir.

Q. I believe he says he brought you about 15 motor gun chargers and you gave him a dollar a piece for them. Is that true?

A. No, sir.

Q. Did Mr. Wright ever bring you or deliver to you any merchandise of any kind?

A. No, sir.

Q. What could you buy these motor gun chargers at the base for, openly, anybody could, that the Government says they admit they were selling. What could you buy them for?

A. Today?

Q. Well, back then?

A. I have one lot over there that I bought and paid 80c a piece for them, that there was supposed to have been 175. I got 163. They were 12 short. The man under me bid 10c a piece, I think.

Q. Bought them for 80c, during the period we were talking about?

A. I could have bought them at 50c. I've bought them at 50c, 75c, from other dealers.

Q. Wouldn't be any point in you buying them for a dollar from Wright if you could buy them for 50c at the field?

A. No. I never put much emphasis on that particular type motor. It's only one type of motor. I may have had as high as two to three thousand motors in my warehouse.

Q. Well now, you made mention a moment ago, Mr. Tomley, of acquiring some merchandise from O. M. Herndon, I believe?

A. Yes, sir.

Q. I hand you one of these papers identified as Deft. Ex. No. 30 and ask you what that discloses, or what that represents. First give me the date of it?

A. December 30, 1954. This is some merchandise that I bought under Quality Supply and at the end of the year when I was going to make my income tax return we got this to put in my records.

Q. Read what it says.

A. "Merchandise bought under Quality Supply Company, released to Joe Tomley, $1,175.26. Merchandise bought under Quality Supply Company on partnership basis, cost one-half, paid by check and cash, $1,066.61. Total $2,241.87. Signed, O. M. Herndon."

Q. Is that Mr. Herndon's signature?

A. Yes, sir.

Q. So about half of that two thousand dollars was paid to you in merchandise and half in cash? Is that right?

A. Yes.

Q. And what did the merchandise consist of? Did it include any of the items that we have got under investigation?

A. I couldn't describe it.

Q. Couldn't say?

A. No, sir.

Q. All right sir, I'll hand you one marked Deft. Ex. No. 31, another invoice from Quality Supply and I'll ask you to tell us the date of that?

A. February 25, 1955. "1 lot approximately"—it looks to me like it was another number here, but I'll go ahead and say "1000 lbs. misc. items, filters gaskets, motors, erectors, brackets, dome, plugs, spacers, etc., and compass. In exchange for above merchandise we received 3 each Wisconsin 4 cylinder air cooled engines type AC-4." Signed, "O. M. Herndon"

Q. You were swapping Herndon an airplane engine for that merchandise?

A. No, it was a power plant engine, Wisconsin 4 cylinder.

Q. Well did this invoice or this bill of sale here from O. M. Herndon, did that include any of the merchandise involved in this investigation?

A. Yes. That is the motors.

Q. Sir? I can't hear you.

A. That is the motors.

Q. This type here, Govt. Ex. No. 6?

A. Yes, sir.

Q. I'll show you Deft. Ex. No. 32 from Quality Supply, O. M. Herndon, what is the date of that please sir?

A. This is Feb. 23, 1955, "sold to C. T. Sales, Inc; Cochran Field, Macon, Georgia. 485 BG 5/3 spark plugs, 33c each, $160.05. Paid by check # 4. O. M. Herndon."

Q. That spark plug you read off there, is that a platinum pointed spark plug?

A. Yes, sir.

Q. And how many did you get?

A. 485.

Q. I'll show you here, Mr. Tomley, Deft. Ex No. 26, which includes an invoice of Joe Tomley to Consolidated, together with the photostats of some other documents, and ask you to look that over and give me the date of your invoice there and tell me what it includes?"

A. "December 20, 1954. 500 used plugs $500.00 as is. 1 lot SP 5287 Cam followers 874.39, paid cks."

Q. What's the date of that?

A. December 20, 1954.

Q. You call these SP 5287 cam followers. Is that the same thing that some of the witnesses have been calling American Bosch springs?

A. Right.

Q. Same identical thing?

A. Same identical thing.

Q. Well now, right there, I would like to ask you if this handfull of springs I have here, if they are American Bosch, the same as—

A. Yes, sir, that's American Bosch.

Q. Are these yours?

A. Yes, sir.

Q. Or C. T. Sales?

A. C T Sales.

Mr. Miller:

We will identify this envelope of springs, American Bosch springs, as Deft. Ex. No. 33.

Mr. Evans:

Do I understand that we are identifying a whole group of springs here?

Mr. Miller:

Yes, sir, an envelope full.

Mr. Evans:

We feel that this does nothing except just confuse the issue, Your Honor, to bring a whole bunch of springs that are brought in here at the time of the trial. I don't see that they could have any possible connection with the case except just to add to the burden of going thru all these exhibits to find out what is the material thing. If they just bring in stuff indiscriminately and dump it in here it's going to be very confusing to everybody. We've just got four or five items involved

By the Court:

Well, I'll let it in. We've had envelopes with several things in them before, haven't we? Boxes too.

Mr. Evans:

Yes, sir.

Q. Was there any secrecy about this sale here to Consolidated?

A. No, sir, no secrecy.

Q. And this duplicate invoice you have had with your records?

A. Yes, sir.

Q. And you are putting it here in Court?

A. Yes, sir.

Q. I'll show you Deft. Ex. No. 27 and ask you what that is?

A. January 28, 1955, 400 used Plugs # 181, $400.00.

Q. Are those platinum pointed plugs?

A. Yes, sir.

Q. You shipped them to Consolidated?

A. Yes, sir.

Q. Is that your duplicate invoice?

A. Yes, sir.

Q. All right sir. I show you Deft. Ex. No. 28 and ask you the date and what that is?

A. "2/16/55 Plugs, used 181, $700.00."

Q. And the last one here, No. 29. First, were those platinum pointed plugs?

A. Yes, sir.

Q. Now No. 29, what's that?

A. "10-20236 Base, total price $651.85. 1-21-55."

Q. I'll ask you if Govt. Ex. No. 4 is what was included in this shipment, 10-20236?

A I think that's what it is.

Q. Is that what you call a scintilla base that some of them have been calling in here a scintilla assembly? Is it one and the same thing?

A. I'm calling this a base.

Q. That's what you sent to Consolidated under this invoice here?

A. Yes, sir.

Q. And how many did you send to Consolidated?

A. At least two thousand.

Q. Was there any 10-20237's in that shipment to Consolidated?

A. No, sir.

Q. Now tell us where you got these 10-20236's that you sent or shipped to Consolidated?

A. Mr. Roberts stopped at my warehouse one day. He saw some webbing, strapping, in there that was bought on one of the lots from the field. He asked me to stop at his warehouse and see what he could trade with me. I in turn went over to Roberts warehouse and walked in there and rummaged thru his place and I saw this box. To me the webbing wasn't worth much, neither was these bases. I in turn said to him, "all right, we'll make a swap." I became the owner of the bases and Mr. Roberts got the webbing or strapping or whatever you call it.

Q. Did you ever get any scintilla bases or springs or points out of magnetos?

A. Yes, sir.

Q. Don't we have a box around here somewhere with some in it? Yeah, here they are. I show you Deft. Ex. 6 and ask you if these breakers came out of magnetos that you purchased at Warner Robins?

A. Yes, sir.

Q. Well let me ask you right down this indictment here, a question or two. Did you or have you from on or about November 1, 1954 and continuously thereafter up to and including May 10, 1955, or at any other time, within the Macon Division of the Middle District of Georgia, or anywhere else, with the intent to defraud the United States, unlawfully, wilfully, knowingly or feloniously combine, conspire, confederate or agree together with Andrew Jackson Wright, or with divers or any other persons to steal, purloin, or knowingly convert to your own use, and without authority to sell, convey and dispose of property of the United States of any kind or nature, Scintilla breaker assemblies with platinum points, American-Bosch breaker point springs having platinum points, motor gun chargers, aircraft spark plugs, or any other property, and to receive, conceal and retain such

property with the intent to convert it to your own use or any use, knowing the property to have been stolen, purloined or converted? You ever do anything like that?

A. No, sir.

Q. Did Andrew Jackson Wright on or about November 18, 1954, within the Macon Division of the Middle District of Georgia, or anywhere else, transport from the North Zeigler Apartments at Warner Robins, or any where else, to your room, or anywhere else, into your possession, 200 American-Bosch breaker point springs having platinum points, or any other number of American-Bosch breaker point springs, or any other property belonging to the United States?

A. No, sir.

Q. Did you, Joseph Tomley, on or about December 1, 1954—December 2, 1954—wait a minute and I'll get it right. I'm about to read the wrong one, Did you on or about December 10 receive, in the Macon Division of the Middle District of Georgia, or anywhere else, from Andrew Jackson Wright, at your hotel room at the Central Hotel, or anywhere else, approximately 225 Scintilla breaker assemblies having platinum points, or any other property?

A. No, sir.

Q. Did you yourself on or about December 20, 1954 cause to be shipped and ship to Consolidated Aircraft Supply Company, Rochester, New York, some aircraft spark plugs having platinum points?

A. Yes, sir.

Q. Were they yours?

A. Yes, sir.

Q. On or about January 20, 1955 did you cause to be shipped and ship to Consolidated Aircraft Company in Rochester, N. Y. about 2000 Scintilla breaker assemblies, from Macon, Ga.?

A. Yes, sir.

Q. Is that what they were?

A. I call it a base.

Q. That's what we were calling a base?

A. Yes, sir.

Q. 10-20236?

A. Yes, sir.

Q. Some folks call them breaker assemblies?

A. Breaker assembly to me has always been two contacts.

Q. Well, did you send two contacts or just one?

A. Just one, the base, 10-20236.

Q. Have you ever sent the other counterpart to it to them?

A. No, sir.

Q. I believe that's the 20237? 10-20237?

A. That's right. I never mailed that to them, or shipped it to them.

Q. Very well. Did you on or about January 27, 1955, ship some spark plugs with platinum points to Consolidated?

A. Yes, sir.

Q. And on February 25, or about that day, did you ship some more spark plugs having platinum points to Consolidated?

A. Yes. I was liquidating all of that materiel, whatever I would have.

Q. Did you, Mr. Tomley, on or about November 18, 1954, within the Macon Division of the Middle District of Georgia, or anywhere else unlawfully, wilfully, knowingly and feloniously receive, conceal and retain, with intent to convert to your own use, and with intent to defraud the United States, 200 American-Bosch breaker point springs having platinum points, the property of the United States, with knowledge that the property had theretofore been

stolen and purloined, from Andrew Jackson Wright or anybody else?

A. No, sir.

Q. Did you on or about December 10, 1954, within the Macon Division of the Middle District of Georgia, unlawfuly, wilfully, knowingly, or feloniously receive, conceal and retain, with intent to convert to your own use and defraud the United States of America, 225 Scintilla breaker assemblies having platinum points, the property of the United States with knowledge that the property had theretofore been stolen and purloined?

A. No, sir.

Q. Were there transactions whereby you bought merchandise at Warner Robins and which you lost money?

A. Yes. In fact I paid for a lot there and had my own equipment remove it right at the Field from the line where I paid for it right to—

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Q. Mr. Tomley, about how much business did your company do with Warner Robins from February 1, 1955 to Feb. 1, 1956, in volume?

A. Close to $90,000.00.

By the Court:

What period was that?

Mr. Miller:

That was 2-1-55 to 2-1-56.

Q. Now approximately, Mr. Tomley, while you were on your own, purchasing from—whenever you started

there, for Quality Sales until the 1st of 1955, about how much money purchases did you make at Warner Robins?

A. Approximately, I would be making a rough guess, up to the 1st of February of 1955, I would say in the neighborhood of ten thousand or twelve thousand dollars. That's a rough guess.

Q. Yes, sir.

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Q. Now, Mr. Tomley bringing us on down here a little closer to the date, where were you when the FBI agent first contacted you concerning this case and talked with you about it? Where were you?

A. You mean in September of 1955.

Q. No. No, I mean when were you arrested?

A. Before I was arrested?

Q. Yes, sir.

A. I was down at Cochran Field. That's in May of '54, or '55.

Q. May of 1955. All right sir, what was the conversation? What did Mr. Powell come to see you about, what was he checking on?

A. Checking on purchases I made from Mr. Bilderback, asked me to stop in at his office and talk with him. I spent about an hour and a half at his office there one day. Probably a week or so after that Mr. Powell stopped at my warehouse at Cochran Field. A couple of other gentlemen were in the car, and he said, "I would like to talk to you at 5:30 in the afternoon", and I in turn—this was probably at around four o'clock or a little after. I in turn came over to see Mr. Powell at as close to 5:30 as I could make it.

Q. And he was checking on purchases of yours from Bilderback, or vice versa? What was it?

A. I don't—er, he was talking to me in regard to Bilderback, and I visited with him that Thursday and the following Monday.—Tuesday morning I was arrested.

A. Now did you show Mr. Powell any and all records you had concerning any transactions with Bilderback?

A. I was willing to. I told him that C. T. Sales had a bookkeeper, the books are open to him. We were talking about a certain deal of breakers that I sold in California. I told Mr. Powell I instructed my bookkeeper that that information is available to him.

Q. Well, did he get exasperated with you or anything, say anything about going to make it hot for you?

A. Mr. Powell did make that statement, that he was under the impression that I was holding out some other information from him and that the FBI could make a bad set up for somebody if they saw fit to do so, or words to that effect.

Q. All right sir. Now when was the next time you and Mr. Powell had a little conference or get together?

A. The morning I was arrested.

Q. Where were you arrested?

A. At the Central Hotel.

Q. You hadn't seen him between the time he got exasperated with you and the morning you were arrested?

A. Well, I came in on a Monday evening after having lunch, or dinner, could have been around 7 o'clock, and there was a call there from Wright. The man at the desk tells me about Wright calling in about some

motors, which has never happened before. I in turn didn't want to talk to Wright. We went out, I came in the second time and I heard the same story, to that effect. I told Mrs. Turner, "If I get a telephone call here from that boy, I don't want to talk to him." I went on out. Next thing I knew Mrs. Turner was being taken in for questioning. I went over to see Mr. Clott, who is my partner, over at the Macon Hotel.

Q. Let me interrupt you. About what time of night was that?

A. I would say that was between ten and eleven o'clock, and Mr. Powell saw me at the Macon Hotel, I think, around 12 o'clock that night, sitting there.

Q. You saw Mr. Powell around 12 o'clock?

A. Yes, sir.

Q. And the next morning you were arrested?

A. Yes, sir.

Q. All right now, you saw Mr. Powell. Where were you arrested? Did he come to you or did you go to him, or where were you?

A. No. I called up the attorney and he told me—

Q. Well, where were you arrested first?

A. At the Central Hotel.

Q. In your room there?

A. I started from my room and there was one gentleman in Room 220 or so, and then he and I went from Room 220 to my room, which I believe at that time was 233, and—

Q. Did Mr. Powell come in your room?

A. After that.

Q. Who was with him? Do you know?

A. I don't remember. I think there was a total of about three or four fellows altogether.

Q. And did they take anything from your room?

A. The motor. I noticed that. Whether Mr. Crutchfield or somebody picked up that motor out of a box that I kept with samples. When I walk thru the warehouse I carry a jacket in the winter when it's cold, that I put things in, so I had a paper box in my room that any time at all that I happened to have any parts or samples I kept throwing it in there and that was one of the motors, was in a box of samples in the room.

Q. I show you Deft. Ex. No. 34 and ask you if that is a box of samples that was in your room from which Mr. Crutchfield took this motor which is Govt. Ex. 6, or one like Govt. Ex. 6? Is this the sample box?

A. The only thing—

Q. Answer me first.

A. It's the motor because they handed me the motor and he said "What do you call this motor", and I just shook my shoulder and just handed the motor back, and that's all the discussion there was with the motor.

Q. Did the motor come out of this box identified as Deft. Ex. No. 34?

A. Yes, sir. This is one motor of samples that I had in my room.

Q. Were the rest of the items in that box at the time they took the motor out of it that are in the box now? Look in there and see if anything else is in there that wasn't in there then.

A. I would say yes.

Q. All right sir. Was anything else taken out of your room?

A. I had some small boxes laying on my desk in the room that I think were watch parts and it was left there.

Q. Well, I'm not asking you what was left. I'm asking what else was taken, if anything?

A. Nothing else to the best of my knowledge was taken from my room except papers or some books. I couldn't honestly swear, but as far as parts, to the best of my knowledge, I don't know. I wouldn't say anything else besides these, outside of personal belongings, papers and things of that sort.

Q. Did you later ascertain that this phone call that was supposed to have come from Mr. Wright was Mr. Victor Powell, the FBI agent, calling and trying to trap you?

A. I couldn't understand the telephone call. The man never called me up before and the only thing is in regards to delivering me merchandise, so therefore I didn't know what it was and any business that I happened to transact—

Q. Well, I'm asking you did you later ascertain that Mr. Powell is the man that was doing the calling?

A. I was answering that question. Mrs. Turner tells me that Mr. Powell told her that he was talking to her on the telephone, impersonating Mr. Wright.

Q. I see, very well. What's this box of stuff I've got here?

A. Various platinum pointed spark plugs.

Q. What's in the tin can. Looks like a can of pork and beans, or a gallon can of some kind here. Plugs in there?

A. Yes, sir.

Q. Is that the way you bought them from the Field?

A. That's the way they come in, mixed with others.

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Mr. Miller:

Well identify this box as Deft. Ex. No. 35, a bunch of platinum pointed spark plugs.

Q. This Bendix scintilla magneto I have here, identified as Deft. Ex. No. 7, have those got the same type, or generally the same type, of platinum pointed breakers in them that are in your box there in front of you, Defendant's Ex. No. 6?

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Q. Well, now, Mr. Tomley, I believe you said that at times Mr. Wright, on some occasions, called you to give you the numbers of some merchandise. Where did he call from?

A. I wouldn't know.

Q. Where were you when he called?

A. Central Hotel.

Cross Examination.

By Mr. Evens:

Q. As I understand it, Mr. Tomley, you have admitted making all of these sales that Mr. Miller read out from the indictment.

Mr. Miller:

All I read out, but I did not read them all out, Your Honor.

Q. Well, I'd better read them all and be sure which ones you admit. 754 American-Boach breaker point springs to Consoliated Aircraft by Eastern Airlines on December 20, 1954?

A. Yes, sir.

Mr. Miller:

I read them all, Mr. Evans, except the one to Harper and Rosenberg.

Mr. Evans:

Maybe I'd better go thru them. That was Overt Act No. 6.

Q. Now, Overt Act No. 7, you admit that you consigned or shipped to Consolidated Aircraft Supply Company a quantity of aircraft spark plugs by Eastern Airlines on or about Dec. 20, 1954?

A. Yes, sir, all of these that I have admitted before I am going to—

Q. Well, I want you to note these carefully because your lawyer says there's one that you didn't admit—

Mr. Miller:

Two.

Q. Two that you didn't admit. That's No. 7. Now No. 8, on or about January 20 shipped to Consolidated Aircraft 2,000 Scintilla breaker assemblies having platinum points, by Eastern Airlines?

A. Yes, I admitted that one.

Q. January 27, 1955, 150 pounds of aircraft spark plugs having platinum points to Consolidated Aircraft?

A. I believe I have an invoice of that with the quantity on it.

Q. I understood you to admit it to your lawyer. I want to be sure.

A. Well, yes, if I have an invoice.

Q. Well, I would like for us to determine that. If you have the invoice there—

Mr. Miller:
Here they are.

Q. Would these help you to know what you did? (Handing them to him.)
A. Yes.
Q. That's 150 pounds of aircraft spark plugs.
A. Dated when?
Q. Dated January 27, 1955.
A. Yes, I got 400 used plugs.
Q .All right sir, on Feb. 16, 1955 shipped to Consolidated Aircraft 150 pounds of aircraft spark plugs having platinum points?
A. Yes, I've got an invoice here for $700.00.
Q. That's correct?

Mr. Buford:
I didn't understand him to answer that. He said something about $700.00, but didn't say yes or no, or I didn't hear him.

A. I said I had an invoice here for $700.00, 2/16/55, plugs, used.
Q. On Feb. 25 shipped to Consolidated, New York 200 pounds of aircraft sparks plugs having platinum points.
A. Feb. 25?
Q. Yes, sir.
A. I have no invoice for it.
Q. Well, are you denying or admitting that you shipped them on that date?
A. I made a shipment at that date. I will not deny any time I make any shipment.
Q. Well, I'm asking you, sir, if you made one on that date, if you admit making one.

A. Yes. My papers may have been mislaid. I'll admit to a shipment.

Q. Sir?

A. I'll admit to a shipment.

Q. You admit that you shipped 200 pounds of platinum pointed—

A. No, not to no 200 pounds of platinum. If it went out as internal combustion engine parts I admit to making a shipment of 200 pounds of internal combustion engine parts, whatever the bill of lading said.

Q. Well, you are the man testifying?

A. Yes, sir.

Q. And you have had this indictment in your hands for some time.

A. Yes, sir.

Q. And you have gone in there and have come in and admitted a part of this. Now what I'm wanting to know is if you are admitting it or denying it, so I'll know whether to prove it other ways.

A. I'm admitting to all shipments to Consolidated that I have on paper. I have no invoice for this one.

Q. This Mr. Ritts' signature back here. He's Consolidated, isn't he?

A. I know Mr. Ritts.

Q. He's Consolidated, he's the man you shipped to, isn't he?

A. I shipped under that name, and if it's a part of his company or a company he's connected with, that is the shipment I used.

Q. Well, do you admit that you shipped 200 pounds of platinum points aircraft spark plugs from Macon, Georgia, on Feb. 25, 1955 to Consolidated Aircraft Supply Company, 1784 East Avenue, Rochester, New York?

A. I admit I shipped 200 pounds by Roadway Express as Internal combustion engine parts, I believe. If I made the bill of lading as spark plugs I admit to 200 pounds of spark plugs. I haven't got that invoice, therefore I can not answer you.

Q. What did you determine at the time you looked this up when you were charged with doing that?

A. Beg pardon?

Q. I say when you were charged with doing that in this indictment, and you had the indictment to make your answer and get your invoices. what did you find when you looked about that shipment?

A. My invoices—that invoice is mislaid somewhere. I can't find the invoice. I will not deny of making a shipment to Mr. Ritts' Company but I can not admit to 200 pounds of platinum pointed spark plugs alone without the shipping container.

Q. Yes, sir. In other words you don't want to either admit nor deny it. You can't if you don't know?

A. I'm not trying to give you an argument. What I'm trying to say is I made the shipment but it wasn't totally two hundred pounds of platinum pointed spark plugs.They had to go in some kind of a box and I would have to have the allowance of the weight of the box.

Q. In other words you admit that you shipped any on that date?

A. Yes, I'll admit that I shipped some to him on that date, but I'll not go to the exact weight.

Q. Yes, sir. Would you say you shipped as many as a hundred pounds, or a hundred and fifty?

A. I'll say—if your bill of lading read 200 pounds I would go along with you on 150 pounds.

Q. When Mr. Powell came out to talk to you did you make that known to Mr. Powell at that time, that

you had made these shipments, when he inquired about them?

A. Mr. Powell asked me if I made shipments, I said yes.

Q. Did you get your records out and show them to him?

A. He didn't ask me for records, where I got 'em. Mr. Powell—I was under arrest. Mr. Powell asked whether he could talk to me. I was more than willing to talk with him. Mr. Powell came down. He kept talking about spark plugs, asked me where I got them. I said an accumulation. We did talk—we mentioned the base, one that I can remember. I—in all of our discussion I never heard much talk about numbers.

Q. You heard Mr. Powell testify up here that you admitted that you made these shipments?

A. I have. I have admitted now that I made the shipments. I don't deny making the shipments.

Q. Now the shipment to Mr. Rosenberg of 36 gun chargers on March 24, 1955, is that correct?

A. I shipped that with 60 other—there was a shipment of 96 motors, I believe, went out that day.

Q. Yes, sir. You are generally familiar with the indictment, are you not sir, what you are charged with in the indictment?

A. The only thing that the attorneys tell me. I'm not versed on law too much.

Q. Well, the only things that you shipped that are charged in the conspiracy are the items to Consolidated, and the items to Mr. Rosenberg, and as I understand it there is only one of those that you are in doubt about and that's the 200 pounds of aircraft spark plugs with platinum points that were shipped

on February 25, 1955, and you are not sure of the poundage in that?

A. That's right.

(Recessed 5:00 p. m. May 9—9:30 May 10.)

Q. Mr. Tomley, I believe when we recessed yesterday that I had gone over certain of the overt acts in the indictment with you relating to shipment of 754 American-Bosch breaker point springs, Overt Act 6; Overt Act 7, a quantity of aircraft spark plugs with platinum points shipped on Dec. 20, 1954 to Comsolidated Aircraft; 2,000 Scintilla breaker assemblies with platinum points shipped on January 20, 1955 to Consolidated; 150 pounds of aircraft spark plugs with platinum points shipped on January 27 to Consolidated; 150 pounds of platinum pointed spark plugs shipped to Consolidated on Feb. 16, 1955; and the 36 motor gun chargers shipped to Rosenberg and Company on March 24, 1955; and I believe that you said that those shipments were all correct?

A. Yes, sir.

Q. As set out in the indictment?

A. Yes, sir.

Q. You have looked at the indictment, haven't you sir?

A. Yes, sir.

Q. And that the 200 pounds of platinum pointed spark plugs that you are charged with having shipped to Consolidated on February 25, that so far as those were concerned that a shipment was made but you would not be sure of the weight?

A. That's right.

Q. Now thru inadvertence I overlooked Overt Act 3 which involves a shipment—says on or about

December 1, 1954 you shipped or caused to be shipped 100 American-Bosch breaker point springs, having platinum points, to Harper Aircraft Supply Company, Dallas, Texas, from Macon by air mail special delivery. Is that correct or not sir?

A. I, er, did ship SP springs, correct.

Q. Sir?

A. But I think the date would be around the 17th of November, if my—

Q. Did you make two shipments to Harper Aircraft?

A. One. Of springs, one. I may have shipped him samples at other times, of some other materiel.

Q. Do you recall having written Mr. Harper a letter: "I sent you special delivery air mail a package last week of springs. I am not worried but I hope it did not get lost. I can ship up to 500 more. Ed Barringer phoned me and offered me $2750.00 for the lot of high lift parts. I had to turn it down as I and Bob agreed to hold for five thousand. Hope to see you near future. Joe". You recall writing that?

A. I may have written the letter to him, yes, sir.

Q. Well, do you remember having an extra five hundred of those springs or were you going to get those?

A. On what date is that letter?

Q. The letter didn't have a date on it.

A. It's possible that I have written.

Q. Now I'll ask you sir if the price that you sold those particular springs for was $1.25 a piece?

A. Yes, sir.

Q. I'll ask you sir did you receive Mr. Harper's company check for those in the amount of $125.00, check No. 2979, dated Dec. 9, 1954?

A. I suppose yes.

Q. An the only question about that transaction would be whether it occurred around the 1st of December or sometime a little earlier?

A. Yes, sir.

Q. I'll ask you sir, if at that time you had 500 of these springs available in addition to the hundred you sold?

A. Beg pardon.

Q. I'll ask you if you had 500 additional springs at that time?

Q. Yes.

Q. How many did you have at that time?

A. The shipment that I made to Consolidated or to Mr. Ritts, I had that inventory on hand.

Q. At one time you had 2500 of them?

A. 2500 of what?

Q. Those springs?

A. No, I didn't say I had 2500. I think I said 2500 pounds of fork lift parts, if I understood that letter right, because Mr. Berringer did buy fork lift parts.

Q. I'll ask you do you remember writing him: "I sent you special delivery air mail a package last week of springs." You didn't send him but one package of springs, did you?

A. That's right, one.

Q. "I am not worried but I hope it did not get lost. I can supply you up to 500 more." Were you talking about springs there or fork lift parts?

A. I was talking about springs.

Q. Well, did you have those 500 more that you could supply him with at that time?

A. Yes, sir.

Q. Well, how many springs did you have to all at that time?

A. At the time I made a shipment of a hundred?

Q. Yes, sir.

A. I had the balance of what I shipped to Mr. Ritts.

Q. How many did you ship to him?

A. 754, whatever it was.

Q. When did you ship to Mr. Ritts, before or after this Harper deal?

A. I believe it was after the Harper deal.

Q. It would have had to have been after it wouldn't it if you had them at that time?

A. I assume so, sir.

Q. When was it that you shipped the remainder to Mr. Ritts?

A. May I refer back to the invoice?

Q. Yes, sir. (Handing it to him.)

A. December 20, 1954.

Q. Now was it the same item that you sent to both of them?

A. Yes, sir.

Q. Was it a follower?

A. It was a spring. I mentioned it in the letter, and I used the word "follower" over in here.

Q. What did you ship to Mr. Ritts there according to that invoice?

A. SP 5287. It's a spring.

Q. Well, what is that follower on there? That's Deft. Ex. 26.

A. "Cam follower."

Q. Yes, sir.

A. It's my mistake. I should have put a spring on here.

Q. Now you have been over this indictment and you know what you are charged with having shipped from down here and you don't have any contention about that. You admit that that material was shipped that was set out in the indictment?

A. Yes, sir.

Q. And the only question is the rest of the indictment that charges you with having gotten it illegally?

A. I believe so, yes.

Q. All right sir, going to Overt Act 1, you heard Mr. Andrew Jackson Wright's testimony here didn't you sir?

A. Yes, sir.

Q. I'll ask you sir whether or not on November 15, 1954, within this Division of this Court, that Mr. Wright transported approximately 200 American-Bosch breaker point springs from the open air storage lot known as Lot No. 15, Robins Air Force Base, to his apartment located at 371-C North Zeigler Apartments, Warner Robins, Ga.

A. I wouldn't know anything about that.

Q. You don't know anything about that?

A. No, sir.

Q. Do you know whether he lived at 371 North Zeigler Apts., Warner Robins, or not?

A. Yeah.

Q. You know he lived there?

A. Yes, sir.

Q. Did you ever visit there?

A. Once.

Q. What was the occasion for your visit there?

A. To see the construction of the house and the home that he lived in.

Q. Were you interested in buying it or what?

A. Not that home, no. I was interested in seeing the rate of rentals on property that people lived in, apartment houses of that sort. I visited at the man's home once.

Q. Did he invite you or did you ask him if you might come?

A. He asked me to come. I asked him that I would like to see the construction of the house.

Q. When was that?

A. Honestly, I couldn't say.

Q. How long had you known him when you paid him that visit?

A. I saw the man time after time on the field, the man spoke to me out on the street, I passed him by! I couldn't tell you when the time was. The only thing that I do know in the whole transaction, there was a man bought a piece of land in Warner Robins and he was talking about building an apartment. At the same time Mrs. Turner was looking to buy a home.

Q. Who is that was looking to buy a home?

A. Mrs. Turner was looking to buy a home, and I took a look at the house, the construction of the house. He told me he was paying a rental of around $35.00.

Q. You say that's the only time you were ever at his home?

A. Yes, sir.

Q. Who was with you then?

A. Mrs. Turner was there with me.

Q. Anyone else?

A. No, to the best of my knowledge.

Q. Now how long did this happen after you came down here to Macon, that you were out to his home?

A. I would say pretty close to ten months to a year.

Q. I see. And when did you come to Macon?

A. In February of 1954.

Q. February of 1954. Well, that would have been somewhere between December and February, December of 1954 and February of 1955, wouldn't it?

A. December of '54?

Q. You came in February of '54?

A. That's right.

Q. Eight months from then would have been between October of '54 and December of '54, that you went and visited in his home?

A. No, I couldn't put the exact date because I'm under the impression that it was after Christmas.

Q. Was after Christmas?

A. That's my impression. I may be wrong.

Q. Was that while Mr. Stauble had his heart attack? Was it before or after Mr. Stauble had his attack?

A. I think it was before Mr. Stauble had his heart attack.

Q. When did Mr. Stauble have his heart attack?

A. I exactly can't tell you, but I think it was around April or somewhere around there.

Q. Stauble was your warehouse foreman, wasn't he?

A. No.

Q. What was he?

A. Just another man that worked around the place, maybe five or six people.

Q. Five or six people?

A. I may have had five or six people working around there.

Q. On the payroll?

A. If they were working they were on the payroll, sir. Mr. Bruskie can verify that off the books.

Q. Was Mr. Lenteni working there at that time?

A. Not at that time.

Q. You didn't have but one working when Mr. Lenteni was there in December, did you, sir?

A. That's right. No, I—just a minute sir. Can I correct myself? I picked up spot labor. When you needed a man for a day or two days work you picked him up and used him as you needed him.

Q. Yes, sir. As far as the time of day is concerned, when did you go out to Mr. Wright's home that time?

A. It would be in the evening.

Q. About what time?

A. Oh, I wouldn't know. It would be after dinner or after supper.

Q. It was at night.

A. Yeah, it would be in the evening.

Q. I see. And you don't know whether he got 200 American-Bosch breaker point springs from out there and carried them to his home or not?

A. No, sir.

Q. Did he ever tell you he did?

A. No, sir.

Q. Now I'll ask you, Overt Act No. 2; "On or about November 18, 1954, within the Macon Division of the Middle District of Georgia, Andrew Jackson Wright transported from the North Zeigler Apartments, Warner Robins, Georgia, to the room of Joseph Tomley, which was located at the Central Hotel, Macon, Georgia, 200 American-Bosch breaker point springs, having platinum points." Is that correct or not?

A. He did not.

Q. You heard his testimony here?

A. I have heard his testimony, yes.

Q. It is erroneous?

A. (No reply.)

Q. Now, Overt Act 4: "On or about Dec. 2, 1954, within the Macon Div. of the Middle Dist. of Ga., Andrew Jackson Wright removed from the open-air storage lot, known as Lot No. 15, Robins Air Force Base, Ga., approximately 225 Scintilla breaker assemblies, having platinum points, and Andrew Jackson Wright transported said property to the North Zeigler Apts., Warner Robins, Ga." You know whether or not he took those and took them to his apartment?

A. I don't know anything about it.

Q. You heard his testimony, didn't you?

A. Yes.

Q. Now number 5: "On or about Dec. 10, 1954 within the Macon Div. of the Middle Dist. of Ga., Andrew Jackson Wright delivered to Joseph Tomley, at the Central Hotel, Macon, Ga., approximately 225 Scintilla breaker assemblies, having platinum points." Is that true or not?

A. Will you tell me what we are speaking of? What breaker assemblies are? I haven't received any of them, but to make the record straight, I have never received no materiel from Mr. Wright at any time, but I would like to have the breaker assembly identified to me right now, if it's possible. If I'm out of order I'll apologize.

Q. But you haven't received any from him, have you?

A. No, sir.

Q. So it doesn't make any difference to you what the Government is charging you with, does it, if you haven't received any?

A. I've been hearing breaker assemblies and I have often wondered. You questioned me on the springs because I had it marked wrong. I'll apologize—

Q. You didn't receive any from him though?

A. No, sir, at no time.

Q. You didn't receive anything from him ever in the way of materiel?

A. No, sir.

Q. So it wouldn't make any difference what you were charged with, you haven't received any kind of Government materiel from him? Is that correct?

A. That's right.

Q. And particularly you haven't received any kind of platinum from him? Any kind of materiel with platinum on it?

A. I didn't receive any materiel from him.

Q. So really there's no use for us to go into all that detail, is there?

A. O. K.

Q. And as far as all this stuff down here is concerned, it doesn't make any difference does it, all this materiel, because you have never received anything from Mr. Wright?

A. No, but I bought it from the Base.

Q. Now you are charged in Count II here that on or about Nov. 18, 1954, within the Macon Div. of the Middle Dist. of Ga., that you did unlawfully, wilfully and knowingly and feloniously receive, conceal and retain, with intent to convert to your own use and defraud the United States, 200 American-Bosch breaker point springs having platinum points, the property of the United States, having a value of at least $350.00, with knowledge that said described property had theretofore been stolen and purloined; and you deny that, don't you?

A. Yes, sir.

Q. And the same way under Count III, you deny 225 Scintilla breaker assemblies, that you got them illegally in any manner?

A. Yes, sir.

Q. Now I would like to know, sir, what your contention is as to where you got this materiel? You admit that you shipped it. What is your contention as to where you got it?

A. I got it—I go to the Field and I buy materiel, by spot sales, Merchandise over there, you do not inspect everything, you put in a bid, the merchandise comes into your warehouse, it is opened and you find merchandise in there—the merchandise that is sold off of that Field, you may have a run of about a week, one or two sales that sells a lot of magneto parts; other times you have aircraft parts. When this merchandise comes up for sale you will find various lots with various kinds of parts in it, so you buy it. You might buy magneto parts this month and you wouldn't buy it for the next two or three months. Whenever you go down the line you put your bids in. You go ahead when the materiel comes in, you open the box and whatever is in the box is there. When you go to the field you have the privilege and they will supply you with a hammer, they'll supply you with a craw bar. In fact my understanding is that they will also supply a man to remove a box regardless of how high it is. Some of them piles up there as high as 15 or 20 feet. Nobody can inspect them or get up there and see what they are. Yet it's offered in lots, so you never know what you get, and when it comes in the boxes are opened. This is where this materiel happened to be found.

Q. You have got all of your invoices where you bought materiel out there, I assume?

A. I have, I would say as close as I could. There might be some misplaced, some maybe lost.

Q. Well, are you contending that it's on a lost invoice that you bought this materiel?

A. No, I'm not contending that.

Q. Are you contending that you have lost some of your invoices?

A. It's possible.

Q. Have you checked back on your books to see if it verifies?

A. Verifies what?

Q. That you have your invoices on the stuff you purchased?

A. Mr. Evans are you asking me, merchandise that will specifically state SP 5287 spring?

Q. No, sir. What I'm trying to do, like we have been trying all the way thru this case, is to get down to the issue. To start with if you bought it wouldn't you have some kind of an invoice representing the lot that you bought?

A. We supplied invoices with springs marked on them, with plugs marked on them.

Q. Let's go back. Maybe I don't make myself plain. You started doing business down here in Georgia, as I understand it, came in and started doing business in February, 1954.

A. Right.

Q. When is the first time that you went out there and bought a lot for yourself?

A. I think sometime in May. May.

Q. May, 1954?

A. Under Joe Tomley, I believe.

Q. Well, did you go under anything except Joe Tomley?

A. I bought some materiel there thru Quality Supply.

Q. All right, sir. You got invoices on everything you bought, didn't you?

A. Yes, sir.

Q. And did you keep those invoices?

A. Quality Supply that was bought under their name kept some of the invoices. They issued me an invoice under Quality Supply that I believe we handed it in here yesterday.

Q. Well, that's all I'm asking you, is if you have got all of the invoices on all of the materiel that you bought? You started to talking about you might not have some of them. That's all I'm getting at. When is the first lot that you bought out there, Mr. Tomley, after you came down here in February, 1954?

A. I believe sometime in February or March.

Q. All right, and that was Quality Supply?

A. That was Quality Supply.

Q. All right, sir. Now, each time that you bought you had an invoice, didn't you, showing the purchase price that you paid for it, a general description of the merchandise that you got?

A. No, I question that, because the spot bid sales, the invoices are not accurate. Just last week I was looking at an invitation sale. I called up Mr—

Q. Now let's don't talk about last week. You save that for Mr. Miller. Let's stay on the issue here that I'm talking to you about.

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Q. Every time you made a purchase you got some kind of an invoice, whether it was right or not, didn't you?

A. I got the invoice that I turned in for an exhibit, yes.

Q. Now are any of those missing?

A. I wouldn't know. I wouldn't be positive.

Q. Didn't you proof them back to see that you had all of your invoices?

A. To the best of my knowledge I have presented whatever there is. I have about five or six hundred others laying there in the box.

Q. You've got a set of books that shows every purchase you made, haven't you, Mr. Tomley?

A. Yes, sir.

Q. Shows who it comes from?

A. Yes, sir.

Q. Shows the invoice number on it, doesn't it?

A. No. I won't say—the Government, as far as invoice numbers, they sell it by spot sales and it may be 15 lots that I paid for at one time and I entered my check into the bookkeeping system, spot sale so and so, or invitation sale so and so.

Q. But then when you get that invoice you put all of the invoices together and you can take your books and they tie right together, an invoice for every purchase. Isn't that true?

A. Invoice, yes; the items that came on that invoice, no.

Q. Yes, sir. All right, sir. Now all I'm asking you is, when you were charged with this thing and you wanted to find out where you had gotten this materiel and show it to this jury by an invoice, didn't you check your invoices against your purchases to be sure that you had all your invoices?'

A. Mr. Evans, I would like to make the point clear that at no time, regardless, if the Base on the spot sale would say 150 pieces of any item, you would go

over there and count that item you will never find an exact figure of 150. You will either find an overage or you will find a minus. The Government in their contract specifies 25% variation. That is what they specify. Also in the procedure they have changed. They will not accept on spot bid sales today any quotations over the mail. They compel a person to come to the field to look at the merchandise, to bid on it, put it into the box, because you bid as is, where is, and they emphasize that rule very much.

Q. Is there supposed to be platinum in that stuff that is sold?

A. Whenever they specify, you look at it and whatever is in that pile you buy it and if there's—

Q. That's not what I asked you. Is there supposed to be platinum in it?

A. I do not run the field, Mr. Evans.

Q. Do you know generally what the regulations are in the business that you operate in?

A. I would like to answer that question under this procedure, to the best of my knowledge I have never signed anything under Joe Tomley or an officer of C. T. Sales that once I bought the item and had it delivered to my warehouse, that deprived me of selling anything and everything that came off of that field. At no time was my equipment or was I or anybody connected with me or C. T. Sales questioned about the materiel that was being removed from the field. And another question is that the Government does not allow my help or me to come over there and to pick up a box off the ground and put it on my truck. They, in turn, do it with their high lift, to the best of my knowledge.

Q. Why did you put that in, that you are not allowed to move boxes off of other pallets and put them on yours?

A. I never said that.

Q. What did you say?

A. I said that when my equipment comes to the field and I may have three or four people standing there, they are not allowed to load the truck. They could back up a truck and take the merchandise that I have bought and paid for and load it, instead of men just sitting in the truck, that they could load my materiel into it. You are not allowed to do that.

Q. You are familiar with that regulation?

A. That's one of the regulations. The truck drivers work it. I never load any trucks.

Q. Well, why were you telling us about that particular regulation at this time? Nothing has been said about that up to now, has it?

A. Would you mind rephrasing your question to me.

Q. I say why did you volunteer to tell us about that regulation, that you couldn't get something off of another pile and put it on yours? Why did you want to tell the jury about that?

Mr. Miller:

Your Honor, he hasn't said he wasn't allowed to get something off of another lot and put it on his. He's made that clear. I don't think Counsel should phrase the question like that, trying to trap the witness.

By the Court:

Yes, I don't think he said that. He said he wasn't permitted to load what he bought. I don't think he said anything about not being permitted to get something off of another pile and put it on his.

Q. What did you mean by your statement? Did you mean that your employees weren't allowed to load?

A. The Government says you buy the merchandise at the gate of your truck, the Government places the merchandise into the truck, whatever you are hauling it off the field with. I have came there and I have had on that Field four men, two trailers standing there because the Government was not able to have high lifts to put merchandise on the truck. I have came to Mr. Scruggs—I—in one specific case, it was in the afternoon, right after lunch, I came there and I had two trailers on the field, about four men, and I asked Mr. Scruggs and he in turn told me that it has got to be done by the high lift placing it on your truck, and they have respected that rule, to the best of my knowledge.

Q. Mr. Galbraith is the man in charge of that particular operation, isn't he?

A. Beg pardon?

Q. He's the foreman, Mr. Galbraith?

A. I knew Mr. Galbraith, yes.

Q. You knew Mr. Galbraith?

A. Yes, sir. You have a procedure. Mr. Galbraith was there, Mr. Scruggs came over there and this particular time that I'm speaking of, I came to the truck driver and I said, "You're partly loaded. How come they are not loading the truck?" He said, "Mr. Scruggs came over here and took the truck away and took the checker away and we're sitting and waiting for it." I said, "How long have you been sitting". They said, "About two hours". I myself came to Mr. Scruggs, I said, "Mr. Scruggs, you have started to load me. How come you pulled a man? Is something wrong or not?" He said, "Joe, right after

a rest period" or "right after lunch", he said, "I didn't know they were loading you". And that's the time that I said, "Well, I got men over there that probably could load—

* * * * * * * *

I said, "I got men over there that could load." Mr. Scruggs said "No, we'll get the high lift and do it with the high lift". Mr. Scruggs himself has came out and checked lots, unloading—

Q. Mr. Galbraith was in charge of that yard out there where you loaded down to December, down to May 1, 1955, wasn't he?

A. Mr. Scruggs was there also. Major Workman was there.

Q. You and Mr. Galbraith have known each other for two or three years haven't you?

A. From a business standpoint, yes, sir.

Q. You remember when Mr. Stauble worked with you?

A. Yes.

Q. Mr. Stauble would go out there with you to get purchases that you made, would he not sir? On the truck?

A. Mr. Stauble would go out there with me in a truck?

Q. Yes, sir.

A. I don't think Mr. Stauble ever rode down with me in a truck, to that field.

Q. Well, I beg your pardon, a truck went along, didn't it?

A. Mr. Stauble may have driven the truck, yes.

Q. The point you are making is you weren't riding in the truck?

A. With Mr. Stauble?

Q. Yes, sir?

A. No, sir.

Q. In other words Mr. Stauble would go in the truck and you would meet him there?

A. It is necessary that whenever you were a high bidder to go—

Q. I didn't ask you that. Just answer my question. I said, you would meet him there?

A. I would come in and pay for the lots of merchandise that I buy. There might be 18 lots, whatever it was, and I'd say "take this, and this and this", and that would be what I had bought, to load on the trucks.

Q. Now if Mr. Stauble said that you, in his presence, went over and took materiel off of other piles and put it on your pile, would he be telling a falsehood?

A. Yes, Mr. Stauble would be telling a falsehood, because when I ever even went to that Field I generally took a man with me. If I wanted a box opened, I did not handle the boxes or throw boxes around.

Q. Not even small boxes?

A. I may look at a box. It's my privilege. If stuff is coming up, merchandise that I have bought.

Q. Well, you testified that you never took a box off of another stack of materiel and put it on yours before Mr. Stauble was taking it off in your truck—

Q. Do you deny that?

* * * * * * * *

A. To make the question clear, I have never taken a box off of anybody's lot unless—let me phrase that right—out of anybody else's lot. I may have taken a

box off of a lot that did belong to me, with the checker present, and say "This goes over to the warehouse with the other merchandise", and there was a checker standing there when that happened.

Q. I want to ask you, did you and Mr. Galbraith ever go down there at the same time you had your truck out there, Mr. Stauble there, to get merchandise that you had bid on? Did you all ever go down there and stay for as long as 30 minutes at a time?

A. Where, stay where, may I ask?

Q. Down on the lot, in the midst of the merchandise?

A. To stay for a half hour?

Q. Yes, sir.

A. On a lot of merchandise?

Q. Yes, sir.

A. I have had trucks on that field as high as four to five hours loading and if Mr. Galbraith was helping out that particular time or anything, he would be standing there not only a half hour, he may be standing there a couple of hours, if he was the foreman, or if there was some lots up for sale and I was to question them he would be the man that I should go to and ask.

Q. Did you ever tell Stauble he couldn't come down there where you all were conferencing?

A. I don't think so. I don't see why I should.

Q. What would Stauble have against you?

A. What would Stabule have against me?

Q. Yes, sir.

A. I don't know.

Q. Is there any reason he should come in here and tell anything but the truth so far as you know?

A. I would much rather have him answer the question than me.

Q. Yes, sir. Well, I want to know, does he have anything against you personally.

A. If you mean, if a man that fell down, had a heart attack, was taken to the hospital, and was discharged from a hospital, didn't have any money to buy any food and I gave him some money to buy food, and he has something against me for trying to be a humanitarian, that's his question. I have no other answer for it.

Q. I mean does he have any basis, that's all I'm asking you, does he have any basis—

A. What do you mean by basis?

Q. To want to hurt you?

A. I don't know. I don't think the man has any reason to try to hurt me.

Q. Now I'll ask you, sir, when you came down here first in 1954, in February, were you working for somebody else or were you working for yourself?

A. Working for myself.

Q. Well now, what was this first connection that you had with the Quality people?

A. The first connection? You mean with Mr. Herndon?

Q. I think he's what you call Quality, isn't he?

A. I had no warehouse. I didn't know whether I would stay here or go away. Mr. Herndon is a gentleman that's been around here, born and raised here, probably.

Q. All I asked you, sir, was when you came down here and made your connection with Quality, whether or not you were working for yourself or working on a salary? Which were you doing?

A. I tried to explain to you that I came down here and went to the field and some of the merchandise that Mr. Herndon wanted to buy in partnership with

me, he bought; some of I bought myself, under his name.

Q. You weren't working for Mr. Herndon, then?

A. No, I didn't draw no salary.

Q. How much capital did you have when you came down here?

A. You mean my actual worth at the time I came down here?

Q. Yes, sir.

A. With all my holdings?

Q. Yes, sir.

A. At least $20,000.00.

Q. What form did that take?

A. Beg pardon?

Q. What form was that in? How much cash?

A. Cash? I may have had six or seven or eight hundred dollars with me.

Q. What cash did you have otherwise?

A. In property?

Q. No, sir, I'm saying cash now. You know what cash is?

A. Well, I told you my total worth and I tried to answer your question.

Q. You said $20,000.00 approximately is the net worth. Now I want to know how much of that was cash?

A. I would say six to eight hundred dollars with me.

Q. Any other cash anywhere else?

A. I could always get a loan of money.

Q. That's not what I asked you. Just answer the question I asked you. I said, did you have any cash money anywhere else?

A. You're asking—no, not that I know of. That was here.

Q. Well, you would know of it, wouldn't you?

A. If my family—if my children have money or my wife has money—I'm speaking from actual money that I used in my business.

Q. Yes, sir. I'm speaking of money in the net worth of $20,000. You say the total of it was six to eight hundred dollars in cash?

A. Right.

Q. All right, sir. Now what were the other forms of it?

A. I have an apartment, got a block building in Cleveland, Ohio.

Q. How much is it worth?

A. I would say, er—I turned down $22,000.00 for it here about three or four months ago.

Q. You said you had a net worth of approximately $20,000.00 and I'm trying to reconstruct what that is made up of. You said six to eight hundred dollars in cash and I want to know what other property you had?

A. I had a piece of property in Cleveland, Ohio, four family, block building. I own some from an inheritance in—

Q. All right, let's take the apartment in Ohio. What were you valuing that at in this $20,000 figure?

A. What was I valuing it?

Q. Yes, sir.

A. $25,000.

Q. All right. What other property did you have as assets?

A. A truck.

Q. What kind?

A. It was a Chevrolet one ton, at that time.

Q. What was it worth?

A. I think around $500.00.

Q. What else?

A. I had an inventory in a warehouse.

Q. Where?

A. Cleveland, Ohio.

Q. What was that worth?

A. Off hand I don't remember what it was.

Q. Well, how much did you put it in at in this $20,000 figure you gave us here?

A. I don't remember what I put the inventory in on my income tax.

Q. I'm not asking you that. I'm asking you what was the value of your inventory there?

A. Could have been a thousand dollars, twelve hundred, somewhere around there.

Q. A thousand to fifteen hundred?

A. Somewhere around there.

Q. Could it have been more than that?

A. I won't say. When you check inventory in this surplus game you generally go into a pound basis set up.

Q. Into a pound basis set up?

A. Yes, sir.

Q. That inventory that was up there, had you gone thru it for platinum materiels?

A. No, sir.

Q. You didn't know whether you had any platinum in there or not?

A. No, sir.

Q. Now what other property did you have?

A. I had a family car.

Q. All right, sir, what else?

A. I don't know. If we are getting into clothes or furniture—

Q. No, sir, not clothes or furniture.

A. Or a watch or something like that.

Q. Yes, sir?

A. Off hand I don't know of anything that I could just go out and loan money on or something like that, unless it's a piece of property from the family that was an inheritance.

Q. Did you have any stocks?

A. Not that I know of, no.

Q. Any bonds?

A. No. I don't know what's in the safe deposit box. There might be a few bonds, might be a hundred or two hundred dollars worth of bonds.

Q. Where is your safety deposit box located?

A. Cleveland, Ohio.

Q. What bank?

A. At the Union Trust, I believe.

Q. Wouldn't you know?

A. I believe it's the Union Trust. After all I haven't been in it for a couple of years and a safety deposit box is at this bank. At the end of the year they send you a statement and you pay it.

Q. You mean the rent on the box?

A. Yes, sir. I haven't been into the safety deposit box for a couple of years, to the best of my knowledge.

Q. Yes, sir, cause there's nothing in it, substantially? That's your testimony? Only a hundred or two dollars?

A. Only a hundred or two dollars? Make that question clear to me, will you please?

Q. I say the reason you haven't been in it is cause there's nothing in it that amounts to anything.

A. Well, I think that I have turned my safety deposit box key over to my wife and if she wants to go in it there is no secret.

Q. If there's anything in it she's put it there?

A. I disagree. No reflection, please, on anybody. I'm trying to answer the question honestly.

Q. Yes, sir. Now that's what bank?

A. Union Trust. I believe it's on Ninth and Euclid possibly.

Q. But at any rate, when you came down here you didn't have any stocks or bonds or securities that would have amounted to over something nominal, a hundred to two dollars?

A. When I came down here I said I had around six to eight hundred dollars on me.

Q. In cash?

A. Yes, sir.

Q. And you didn't have any securities, any stocks, or bonds or debentures, or any securities of any type that would have been worth in excess of a nominal figure of a hundred or two dollars?

A. I don't think so, no.

Q. But wouldn't you know, sir?

A. If my family has it, if my wife has it. What I know, honestly know.

Q. All right, sir. Did you have any accounts receivable where people owed you money?

A. Honestly I couldn't say. If it was, it wasn't too much one way or the other. What I mean by too much, if it's a hundred dollars or two hundred—

Q. Well, I'll say in excess of a couple of hundred dollars?

A. Not that I could say, honestly, no.

Q. Did you have any notes receivable?

A. Not that I know of.

Q. Well, you would know if you had some?

A. That's right.

Q. In other words the only thing that you actually had in cash money, I mean in something that was the cash equivalent, was some six or eight hundred dollars that you brought with you down here?

A. Yes.

Q. Did you owe any money?

A. In fact I still think I owe some money, yes.

Q. I'm talking about as of the time that you came down here?

A. Yes.

Q. What did you owe?

A. I owed a little bit—at that time I owed a little bit on my building. I won't say that it was over $500. There was a new set of furnaces put into my building, I would say around two thousand dollars. I may have owed, er, Oh, I don't know, something on a car, maybe five or six hundred dollars. I'm just speaking of what I knew that I owed at that time.

Q. Have you had occasion since then, or rather down to the end of this conspiracy in May, to borrow on that apartment building?

A. Did I borrow on it?

Q. Yes.

A. No.

Q. It's still just like it was? You never had occasion to borrow on it?

A. I didn't borrow on the apartment building, to the best of my knowledge.

Q. Well, you would know if you had.

A. Well, understand, this property is in Joe Tomley and Edna Tomley. That's my wife. Ralph O'Darrell (?) has the authority of power of attorney over it. Now if my family is deciding—they have been talking about buying another home, and er—

Q. Well, I'm not—I'm just trying to find out if you have got any money from a mortgage, putting a mortgage on this apartment building to use in your business operations down here?

A. No, I did not.

Q. Have you borrowed any from your family?

A. I think so.

Q. How much?

A. It's not tied into my property. I gave my sister a note that she's holding for me.

Q. Is that your sister Ann?

A. Yes, sir.

Q. Did she give you money for the note?

A. Yes, sir.

Q. How much?

A. I think my note read around $3,000, that in my traveling, in case I dropped dead or something, or get into a wreck, I want her protected.

Q. When did you give her the $3,000 note?

A. I couldn't tell you because I don't remember.

Q. Since you've been down here?

A. Yes, sir.

Q. Was it on the trip that you made up there just before you got arrested?

A. It could have been.

Q. Don't you remember?

A. I could have mailed the note, yes, because as far as the family is concerned if I needed five hundred dollars or so, and the kid had it, I got it from her.

Q. That's your sister that lives in Ambridge, Pennsylvania?

A. Yes, sir.

Q. That's the same one you had Mr. Stauble call, wasn't it?

A. Yes, sir.

Q. That's the same one that was mailing you the invoices?

A. Can I elaborate on that?

Q. Yes, sir.

A. She did not mail me no invoice. I would like to make one point clear if I may, as far as that letter is concerned. I have a brother-in-law who has a very bad heart condition. I have a sister, another brother-in-law that has spent the last two or three years in a hospital. I have a sister-in-law laying in a hospital at Mercy Hospital, Pittsburg today with cancer that her days are limited. Therefore, when I went up there I saw what was happening. I sits down and writes myself a letter to make out a will so these things don't—to do something about the thing. That's all there is to it, as far as the letter is concerned. I asked the kid to mail it to me. So that's the thing. And she's being crucified, so help me. I did what I—Why I asked Stauble to call the girl up is so in case anything happens, if my brother-in-law dropped dead, or one of the others, so it don't upset the family, so help me, there was no invoice. There was no necessity for an invoice. When I was up there—I wasn't up there with them for over a year, and they are people that I think a lot of—

Q. Mr. Tomley?

A. Yes, sir.

Q. When you came down here you say you had some six or eight hundred dollars?

A. Yes, sir.

Q. To operate on. Have you borrowed any money besides the three thousand dollars from your sister?

A. I may have borrowed a couple of hundred dollars, two or three hundred. Please bear in mind that

I never want to take nothing from nobody. Therefore,—

Q. Mr. Tomley, don't get upset. All I'm asking you—

A. It hurts me. I'm sorry. I apologize.

Q. All I'm asking you is if you borrowed some money?

A. Yes, sir.

Q. Who from?

A. Mrs. Turner.

Q. How much?

A. I would say Mrs. Turner gave me a hundred dollars whenever I needed it, instead of borrowing something. She would see me depressed. I may need money, may have an invoice, may be supposed to receive a check like tomorrow or a week from there, and Mrs. Turner would say "Joe, what you depressed about". I'd say, "Oh, two or three hundred dollars might break it". She would let me have money. So I went ahead and I said, "Look, I drive around the country, something may happen to me, I may get killed. So as not to deprive yourself—" and I sat down there and I made a nominal figure, at one time, and signed a note to her, so in case I got killed nobody would lose anything by it.

Q. How much is that note for?

A. I believe it was—I took a figure of $600.00, if I ain't mistaken. I could be wrong.

Q. Well, I take it then that you have had a rather difficult time with your finances since you have been in the business down here during the period that you are charged under this conspiracy; that you were just hand to mouth, so to speak, borrowing a hundred dollars and paying it back. Is that correct?

A. No.

Q. Well, what have been your circumstances?

A. I would like to answer your question this way. That it is common knowledge and it is a common practice in surplus dealings, you create a reputation, you go along, you are honest in all of your dealings, some of these boys that have money, you can phone them, and I have always been honest in my dealings, if I needed five hundred dollars or a thousand the man would send me the money. I get a loan of money when I told him I would have it, I would return it because you may only use the money for a week or two weeks, you pay for it here and it's sold there. It ain't always that you turn over merchandise. You stock merchandise, and—

Q. Well, what—wait—do you mean that you were borrowing from some of the people in the business?

A. Yes.

Q. Who did you borrow from in the business?

A. I think I borrowed some from Harry Paster.

Q. That's Mr. Harry Paster of Detroit, Michigan?

A. Yes, sir. I have had checks sent in to me to pay for merchandise and then ship it, money would come in.

Q. Well, Mr. Harry Paster is the biggest man in the platinum business, isn't he, platinum recovery?

A. I would say he's one of the biggest in the electronic field.

Q. Yes, sir. Did you know Mr. Paster before you came down here?

A. Yes.

Q. Before you came?

A. Yes, sir.

Q. How long have you been doing business with Mr. Paster?

A. I done a considerable amount of business with him when I was with World Surplus; in dollars and cents I don't know.

Q. How long have you been doing business with him?

A. I would say in the last ten years.

Q. About ten years?

A. Pretty close to ten years.

Q. How much platinum bearing materiel did you sell to Mr. Paster from down here, deliver to Mr. Paster while you were in business here?

A. Beg pardon?

Q. How much platinum bearing materiel?

A. Bearing?

Q. Stuff with platinum in it?

A. Very little. Whatever I delivered to that gentleman was in invoices.

Q. What was?

A. Very very little, to the best of my knowledge, very, very little. Now don't misunderstand me, Mr. Evans. If that man bought a relay from me, or if he bought a unit, a radar unit or something, and that had platinum in it, it's no fault of mine because I did not know it.

Q. You didn't know what, sir?

A. That there was platinum in radar, in some of them radar units or relays or any other of that merchandise. If it had platinum in it I don't know it. For me to tell you I never sold it, you tell me that it was in this or that unit.

Q. Well, you never did sell any platinum so far as you know to Mr. Paster?

A. I may have sold him.

Q. Except just something that might happen?

A. I'd say a few spark plugs, there may be a few spark plugs there that I can remember off hand. I would have to check my papers, but there was very, very few.

Q. Does he specialize in platinum?

A. He specializes in electronics. He does work metals, and it isn't only that he specializes in platinum, but—

Q. Silver and gold too?

A. Silver, gold, iridium, titanium, every metal imaginable to the best of my knowledge.

Q. He's the biggest operator that takes this stuff and salvages it for its metal value, precious metals, isn't he?

A. I would say he advertises thru all the country asking for that materiel, so if he's the biggest—I wouldn't go on record, but he does do a tremendous business.

Q. He's the man that normally you would sell your stuff to that you put in the little room that Mr. Lenteni was telling about? He's the man that normally you would sell that to, isn't he?

A. I don't see why. I have sold to Mr. Harper. If I was looking to Harry, why would I bother Mr. Harper or Mr. Ritts.

Q. Let me ask you, when you came down here did you talk it over with Harry Paster?

A. To what respect?

Q. About your coming down here?

A. Harry Paster had nothing to do with me coming down here.

Q. After you got here you borrowed some money from him?

A. I may have. I may have. I have returned it.

Q. You may have?

A. I may have.

Q. Well, that's what I'm asking you, did you?

A. I never made notes of something, if, er—I never signed no notes for him. If you mean have I ever signed a note for Mr. Harry Paster, loaning money from him, no.

Q. No, sir, I didn't ask you that. I just asked you if you borrowed money from him? If he advanced you money in any way?

A. He has advanced me money, yes, for my own personal use, and I returned him the money.

Q. How much has he advanced you?

A. Oh, I couldn't tell you. It wasn't no five thousand or—

Q. Sir?

A. It wasn't no big figure. I would say, er, recently, I would say about—well, when I was with C. T. Sales I put a check in—I happened to be in Detroit for Christmas vacation, the sale that opened up over here in January, I believe, on the 28th, we got to talking about one lot for sale that was over there and I myself was short of money because I had to send a certified check, so I took a thousand dollars from him and I gave him our company check to return a thousand dollars, because I had to send a certified check to the Base here as a deposit on some merchandise that was up for sale.

Q. He loaned you a thousand dollars in that instance?

A. In exchange for checks.

Q. That was Christmas, when?

A. I think of 1955.

Q. Christmas, 1955?

A. Yes, sir.

Q. How many other times did you borrow from him?

A. Oh, I wouldn't know. I never kept a record. I wouldn't know.

Q. Fifteen or twenty times?

A. No, I wouldn't say that.

Q. Ten or twelve?

A. You are trying to put me down to a figure and that would be guessing. I'll admit that he has loaned me money. I have returned the money. Sitting here today I do not owe Harry Paster any money, and that is that. I won't say whether it was two, three, four, five times.

Q. I see. Who else in the business did you borrow from?

A. Whenever I bought some—some of the people—when you speak of borrowing, some of the people would send you a check with an order. You consider that borrowing? Before the merchandise got there.

Q. I wouldn't consider that borrowing, no, sir.

A. Not anybody that I know off hand.

Q. Mr. Paster is the only one you borrowed from.

A. I would say yes.

Q. And you say that never did amount to too much, but was just a kind of temporary thing to help you out over little humps—

A. To the best of my knowledge, what ever it was it was just—

Q. He didn't make you a permanent loan? He didn't make you one lasting for several months?

A. He could have, if you are referring back to 1954, sir.

Q. Yes. I'm referring back to the time you came down here to go into business.

A. Because I can't, for all my acts in 1954 and '55, I can't account for every least little thing.

Q. No, sir, but if you were coming down and going into the surplus business, into a big warehousing operation, two warehouses here, you wouldn't come down here with six or eight hundred dollars would you?

A. If you are speaking of February of '54—

Q. Yes, sir.

A. —and we are referring back to my warehouse, two warehouses that you are speaking now as of '55, them warehouses were at the start C. T. Sales. C. T. Sales carried one warehouse. That's, I think it's Warehouse 270 on their books, to the first of January, 1956, only. The other warehouse is on my name, $40 a month.

Q. I probably misled you. All I'm trying to find out is what you had to do business with when you came down here in February of 1954 except six or eight hundred dollars in cash?

A. And a reputation of honesty, and trying to work and turn over merchandise.

Q. Yes, sir, and that's all you had, six or eight hundred dollars?

A. In actual cash.

Q. Did you have your truck in addition to the six or eight hundred dollars?

A. No, I think I owed something on the truck. I think I paid the truck off the following April or something like that.

Q. Where did you buy that truck?

A. In Cleveland, Ohio.

Q. Did you drive it down here?

A. Yes, sir.

Q. And you owed a balance on it and you paid it off?

A. I think I paid it off in April of—

Q. Did you pay it off out of the six or eight hundred dollars?

A. Out of the deals that I was selling, yes, sir.

Q. I see. And you were doing all of your operations on six or eight hundred dollars less what it took to pay off the truck. How much did it take to pay off the truck?

A. I don't quite remember, may have been $300 or so. It couldn't have been over six hundred cause that's all I paid for the truck originally.

Q. Your operations weren't very large when you first came down here, were they, sir?

A. Well, when you say large, six or eight hundred dollars, there's deals, there's merchandise that you can buy that sometimes makes three or four or five times your money, and that's for instance a ball bearing or something like that, where you can make a very nice profit.

Q. I see. Now what were your purchases, what did you do in the way of purchases from Warner Robins from February down until, well, let's just say the six months following February of '54?

A. It was a general run of merchandise, could be ball bearings, could have been anything.

Q. I mean in terms of dollar expenditure. How many dollars did you spend for the purchase of merchandise at Warner Robins the first six months you were in business?

A. I couldn't tell you without having the records checked, without checking them. You must realize another thing, that whenever I would stop at Bill Myers, stop at any of these other dealers, see an item

over there that was worth fifty cents or a dollar to them and I could get myself seven or eight dollars for it or ten dollars, and a man has ten or fifteen of them, it didn't take very much to take an item, for instance, like an oxygen regulator that I was shipping to Cleveland and getting ten dollars apiece, and I was buying it for a dollar. If I took 20 of them my initial cost was $20 and I got $200 in return, and that's merchandise that you could pick up from these other dealers here. And it's not only that it was from the Base; it's from other dealers. I was pinpointing a lot of this merchandise.

Q. You were pinpointing merchandise?

A. What I mean by that, you would walk into there and see their inventory. Maybe you could use this and maybe you could use that.

Q. Up until the time you got into C. T. Sales you would buy reasonably little direct from the base? Most of it was from other dealers, wasn't it?

A. I bought some from the base.

Q. How much?

A. I couldn't tell you in dollars and cents.

Q. Roughly how much?

A. I wouldn't even estimate it.

Q. A thousand dollars a month?

A. Beg pardon?

Q. A thousand dollars a month were you spending?

A. I couldn't tell you unless I would have to check the records.

Q. Well, you've got your records haven't you?

A. I got into the records of what was in the indictment. Mr. Clark had a warehouse over in here that I believe I heard him make the statement that he bought something like forty thousand dollars worth

of materiel off of that Base. I would gointo his warehouse and he would say to me, "any of this materiel you can ship," and I could ship that materiel and it never cost me anything.

Q. No, sir, I'm talking about not Mr. Clark. We'll talk about him later. I'm talking about your operations from February, 1954 up until the time you went into C. T. Sales. When did you go into C. T. Sales?

A. 1st of February of 1955.

Q. Well, you have got the records on how much you spent at Warner Robins itself during that period of time, haven't you?

A. I have records; the bookkeeper has them.

Q. And you can have them back here after lunch, can't you?

A. No, it's impossible.

Q. Sir?

A. Not under Joe Tomley, it's impossible.

Q. Why?

A. Because I closed my '54 year up and they are in Cleveland.

Q. They are in Cleveland?

A. Yes, sir.

Q. You don't know how much you bought in February, 1954 until you went into C. T. Sales—you don't even know approximately the gross figure that you bought from Warner Robins?

A. I would say around ten thousand dollars.

Q. Around ten thousand? That's about eight hundred dollars a month.

A. I would say around ten thousand dollars. I could be wrong, but I'm under that impression.

Q. And you were buying spot stuff on the outside in addition to that?

A. Yes.

Q. Now in that stuff that you were buying on the outside from these dealers, you would go there and recognize the value of something and you would buy it for its value then and there, wouldn't you? You wouldn't buy just big blobs of junk from dealers, would you? You would go in there and see an oxygen mask or something of the kind that you could buy for a dollar and sell for ten?

A. I would recognize it, yes, sir.

Q. You didn't go out and just buy whole big lots of things indiscriminately?

A. Not from other dealers. I have done that since I have been with C. T. Sales.

Q. You have?

A. Yes—I believe—yeah.

Q. You what?

A. Yes.

Q. So up until February, 1955 in your first year of operations, before you got with C. T. Sales, you wouldn't say that you had gone out and bought specifically from some dealer any of this stuff that the Government is charging you with, would you?

A. No, sir. No, except I got some spark plugs from Strickland.

Q. Is that the preacher that was in here?

A. M. D. Strickland, or something like that, yes, I got some spark plugs from him.

Q. You got some spark plugs?

A. Yes, sir.

Q. Well, did you buy any of these specific lots of stuff enumerated here in the indictment that we have been talking about, this man says he stole and brought to you? Did you buy any of that from dealers specifically down to February, 1955?

A. At what date, up to what date?

Q. February, 1955. That's when you went with C. T. Sales, wasn't it?

A. Before C. T. Sales?

Q. Yes, sir.

A. Let me get the time element here. I don't know how to answer your question. I don't quite get the clear significance of it.

Q. Well, the signifigance of it is that I am just asking you did you buy any of this stuff, that you are charged with in the indictment, from any individual dealers that you happened to go around to and say "there's a hundred breakers, and this dealer doesn't know what he's got, and I'm going to buy them from him."

A. Not that I can remember.

Q. Well, you would remember it wouldn't you, if you ran into a bunch of platinum in some dealers hands and he didn't know the value of it?

A. Leave me answer your question in this way. Mr. Roberts—the 20236, I traded materiel with him, I didn't know if there was any platinum in the item or not, at the time I done it.

Q. When did he die?

A. I don't know.

Q. Is he dead?

A. I was under—yes, I was told that the man died.

Q. After you traded with him!

A. I think that deal was consummated at the first part that I started to open up my warehouse. I think that that happened in May or June of 1954, to the best of my knowledge. I don't know when the man died.

Q. You think he died in May or June of 1954?

A. I don't know when the man died, sir.

Q. When did you trade with him?

A. Sometime in May or June or July, somewhere around there.

Q. What year?

A. 1954.

Q. You are sure it wasn't October?

A. Are you referring to me saying October? I don't think it was October. I think it was prior to October.

Q. It was June or July, 1954?

A. I would say it was prior to October.

Q. And how long did you hold those particular items before you sold them?

A. I wouldn't know. I never even paid much attention to them, because the webbing or strapping was of no particular value to me. By the same token it didn't make too much difference to me which box was laying anywhere on the floor.

Q. In June or July you picked up these 754 American-Bosch breaker point springs. Was that the ones you got from Mr. Roberts? What was it you got from Roberts?

A. The bases.

Q. How many?

A. Evidently around 2000.

Q. Is that the same one that this fellow that was with you said there was 1028 of, Lenteni, or whatever his name is?

A. He said 1028 of them? What did he say?

Q. I thought that was what he said. You were here, you heard him, didn't you. Lenteni, didn't he say you picked up 1028, that he remembered counting up to 1028, or am I mixed up?

A. I'm saying what was over there. If the gentleman said he found me a thousand springs over in there, or that equivalent, that's what he said. If he

said the bases—I contend that there was 2000 bases over there.

Q. Two thousand bases? And that's the same 2000 bases that you shipped to Consolidated?

A. Yes, sir.

Q. On January 20, 1955?

A. If the invoice says so, yes.

Q. Well, let me get the invoice and be sure. (Handing it to him.)

A. Yes, sir.

Q. That's Deft. Ex. No. 29. Now you held those bases from June or July until January 20, 1955 before shipping them?

A. Yes, sir.

Q. Is that correct, sir?

A. Yes, sir.

Q. What did you sell them for?

A. Thirty something cents, I think.

Q. How much was the total amount?

A. Price over here is $651.85.

Q. And I believe they were in a little box about 12 x 12 x 18, according to Mr. Lenteni's testimony, weren't they?

A. 12 x 12 x 18?

Q. Am I mixed up?

A. I wouldn't say 12 x 12 x 18.

Q. What would you say it was?

A. I would say that, er—12 x 12 x 18, I was thinking was a pretty large box. I would say that the box wouldn't be—to the best of my knowledge, 8 x 8 x 8.

Q. 8 x 8 x 8?

A. Yes.

Q. And that little box you got on a trade for how much stuff?

A. Approximately 150 lbs. of webbing, whatever I had, that was the deal. Hundred to a hundred and fifty.

Q. Hundred to a hundred and fifty pounds of webbing?

A. Yes, sir.

Q. How much was a hundred to a hundred and fifty pounds of webbing worth?

A. I wouldn't know.

Q. What value did you put on it?

A. Somebody came in there and offered me a hundered dollars for it he would have got it.

Q. I see. Why did you trade the webbing for 2000 breaker assemblies?

A. Because the man was in the retail business. He wanted to buy it. He said "stop at my place and see if we can do some trading for merchandise", which is a common practice in the business with surplus dealers. You have various trades among yourselves.

Q. Did you have any idea that you were making a good trade?

A. No, sir, not at that time. The only time that I found out that the 20236 at that time was of any value was when the Base sold 21,000 of the 10-20237 and to the best of my recollection at that time I saw what Thomas had, because we were talking about it and that's whenever I thought that this thing might have some value.

Q. Do you see one of them in there that you are talking about? (Handing him a box containing items.)

A. (Inaudible.)

Reporter:

I'm sorry. I didn't hear him.

Mr. Evans:

He's referring to Govt. Ex. No. 4 and he said "It could have been this kind of an item here".

Q. I'll ask you sir, is that thing marked "P" on it?

A. Yes, sir.

Q. What does that stand for?

A. I have inspected in a plant, that P could have been a man that checks the metal, the hardness of it or anything. I would never take P on it that it's platinum.

Q. Here's one that's a little bit bigger. I show you Govt. Ex. No. 7. That's got "Plat" on it. What does that stand for?

A. Could I have a magnifying glass please?

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I see "Plat" stamped on here. It could mean anything, because—

Q. I see. It doesn't mean anything in particular?

A. In this particular thing, after all this discussion, since May of 1955, I would say that this means platinum on here, but as far as the abbreviation for platinum, I don't know what it is.

Q. I see. But at any rate you got those things and you were borrowing money from Harry Paster—were you borrowing money from him at that time? That was in June of 1954, the biggest platinum man in the country. Were you borrowing from him at that time?

A. I may have.

Q. Sir?

A. I may have.

Q. You had been in his place of business numerous times?

A. Yes, sir, I have been in his place of business.

Q. You have seen his platinum operations, haven't you?

A. Yes, sir.

Q. Did you ever say, "Harry, what does 'Plat' stand for? I'm liable to run across some of this".

A. I have just admitted that it means platinum in the Bendix scintilla, that particular—

Q. Did you ever discuss with Harry that you were going to be buying a lot of stuff that there was liable to be some platinum in and you wanted to know how to recognize it when it came thru?

A. If I would have gone into detail with Mr. Harry Paster he, in turn, would have probably given me various kinds of answers, or told me where to go to find out the contents of materiel to get some clarification. Mr. Harry Paster did not at any time give me any answers or anything to clarify a point for me.

Q. Any what?

A. To clarify a point, what kind of metal anything is. Therefore he never talked me into doing anything.

Q. Did he give you any number that you could get them under?

A. Did he give me any numbers?

Q. Yes, sir.

A. I believe there's a national magazine being advertised all over the country today that you can open up and get a lot of numbers.

Q. But when you bought this from the dead man, Mr. Roberts, in June or July, 1954, you didn't know that there was any platinum in it?

A. I did not.

Q. You were just buying—what were you going to do with these things worth a hundred dollars, if there wasn't any platinum on them? You got 2000 of those and you gave him something worth a hundred dollars. Now if there wasn't any platinum on it, what would it be worth?

A. I would appreciate very much to have anybody come into my warehouse and I could pull out invoices and show that you buy materiel many a time that you have no value of it. You go along, you see items today that ain't worth nothing, and six months from now it creates a value. I'm no expert on a lot of this merchandise that we are buying. Here is a man that wants—

Q. But you say Mr. Roberts was a little operator, a man that had a little retail outlet and that he could use some—what's the stuff—webbing?

A. Webbing.

Q. In retail sales?

A. Yes, sir.

Q. And there you were. You were a man struggling along in June, 1954, you just paid off your automobile, left you about three hundred dollars in money, and you were having to borrow, and you were looking for good close trades, and you walked in there and you had something that you thought maybe you'd better get a hundred dollars for and you traded it for something—would you have traded it for something that wasn't worth anything to anybody?

A. You are referring to me and telling me that on the first day of June I had $300.00. I'll dispute that. You asked me—I answered your question as of February. I don't know what I had in June, because you fluctuate. One week you might have eight hundred dollars and the next week you might have a hundred

dollars of fifty dollars, but it didn't make no difference to me in having this laying on the floor of my warehouse or having the webbing, because I was not in the retail business, and a man wanted the item over there, it may eventually finish up with a value, it may not.

Q. And you would trade something that there was a ready market in, ready legitimate market in, that webbing, that a retailer could use, you would trade it for 2000 little things that you didn't even know what they were good for, and didn't suspect they had any platinum on them?

A. All I got to say about that item, it may have had a value to it. Anything pertaining to aviation at any time may have a value to it.

Q. Did you really get these from Mr. Roberts?

A. Yes, sir.

Q. Then, after you got them you held them from June until January. You went to sell them in January? Is that right?

A. Yes. I evidently contacted Mr. Ritts prior to that date, asked him if he could use something like that there and he, in turn, informed me yes, and we closed the deal.

Q. Did you look at them after you made your trade?

A. No more so than I did on the trailer load of merchandise that I hauled in from Cleveland here in October of 1954

Q. You had this little box 8 x 8 x 8 and drove back from Mr. Roberts to your warehouse? Is that right?

A. Yes.

Q. Where did you put them in your warehouse after you got back?

A. In the room that I had for automotive parts.

Q. In what?

A. Into the room for automotive materiel.

Q. Why, when they are airplane parts?

A. Well, it could have been automotive or anything.

Q. You didn't know whether it was automotive or airplane, you mean? Did you know whether it was automotive or airplane?

A. No.

Q. Well, are all automotive parts valuable? You said the reason you were willing to take them was because all aviation parts were valuable. Are all automotive parts valuable too?

A. It's possible.

Q. Was that the way you did all of your trading, Mr. Tomley, on the basis of possibility?

A. I do that every time I make out a bid sheet. On lot of this merchandise there's a possibility, yes, sir.

Q. Did you own that glass at the time?

A. At that time?

Q. Yes, sir. That glass you have there now. (Magnifying glass.)

A. No, sir.

Q. Never had looked thru a glass before that?

A. Yes, sir.

Q. Well, if you are an astute man, and you look on a part, you've been in the business long enough to have known that that looks like an ignition part with the tips setting up there? Didn't you know that when you got them from Mr. Roberts, if you got them from him. Doesn't that look like an ignition part?

A. You're asking me?

Q. Yes, sir.

A. I would say if you took a hundred people walking down the street and you would take that part to

them and ask them what is it, they would probably tell you it's a piece of scrap. I would say 95% of the people walking down the street.

Q. But in June, 1954 you weren't one of those 90% of people, were you? I'm talking about you now.

A. As far as metal is concerned in this thing, speaking of platinum, I did not know that there was anything in there.

Q. You mean that you didn't even know that that was an ignition part.

A. At that time?

Q. Yes, sir.

A. I'll say this for that item, at that time the man wanted the webbing and I bought that from him and I honestly can not say, sitting here right now, that I was positive of what it was at any time.

Q. Did you know it was an ignition part?

A. I wouldn't positively say that I did.

Q. Did you know that it was an airplane part?

A. I wouldn't positively say that I did.

Q. Did you know it was platinum?

A. No.

Q. You didn't know what the P on it stood for?

A. Here is an item of the same manufacture that we are speaking of, Mr. Evans—

Q. Just answer me that. If you don't know say so.

A. No, sir.

Q. Now can you take that glass of yours and look at that piece of platinum and see the manufacturer's marking on there, platinum.

A. I wasn't acquainted with it.

Q. I'm asking you if you can now.

A. (Looking at it thru the magnifying glass.) I see some kind of a stamp on there.

Q. They do stamp them, don't they?

A. I have found that out from Mr. Ritts information on the witness stand.

Q. Yes, sir. And you just didn't have any idea at all that you had this platinum after you bought the stuff, and you say you bought it from Mr. Roberts in June? You just didn't have any idea at all that it was platinum?

A I—to me it was a vague item. I didn't pay much attention to the item.

Q. You swapped something worth maybe a hundred dollars for it?

A. My swapping that particular item at the value I said, if a man came in and offered me a hundred dollars for the webbing I would have been tickled pink to take his money, and at that time, as far as the value of the webbing and this item, it didn't make much difference to me which one laid in the floor of the warehouse.

Q. You were just doing that more or less as a gesture of good will to Mr. Roberts?

A. I wouldn't put it that way.

Q. Well, you weren't hoping to profit by the trade were you?

A. Mr. Roberts had a market for the webbing. He, in turn, wanted to trade the webbing for something in his store. I primarily came in there to look around to see what there was, and that's where we finished up on that particular box.

Q. Well, er, you took the webbing with you when you went over?

A. He visited my warehouse prior to that.

Q. And said he wanted the webbing?

A. He said he could use the webbing, to come up and see what we could trade with.

Q. And so you looked all around and this thing was the thing to trade for?

A. Seemed to be a quantity. That's the only reason.

Q. He didn't have quantities of anything else?

A. If the thing was worth two cents a piece or three cents, with the quantity there it would still have brought me forty or fifty dollars.

Q. And you would have given up something that wasn't worth but over a hundred?

A. I never said it was worth a hundred. I said I would have been tickled pink if somebody would have came into my place of business and would have offered me a hundred dollars for that webbing.

Q. How much would you say the webbing was worth?

A. I wouldn't know. I wouldn't know.

Q. What does it sell for on the market? This sells for $1.75 a piece. What does the webbing sell for on the market?

A. The webbing?

Q. Yes.

A. I don't know.

Q. Approximately what was the Govt. acquisition cost on the webbing?

A. What they sold it out there on the field and what I had bought, I would say about two cents a pound, three cents a pound. I'm talking about the price that I paid for it because it came from the salvage yard.

Q. I see. Now tell us about you all's trip over there to Mr. Roberts. You went over there along in June.

By the Court:

I believe we will have a recess here, Mr. Evans.

(Recessed 11:10-11:30 a.m.)

Q. Mr. Tomley, going on with this transaction that you had with the dead man, Mr. Roberts, I believe that your testimony was that you went out there in June. You heard Mr. Lenteni's testimony that you went out there around the first week in September. Now which of those is correct?

A. I assume it was May or June, like I originally said, May or June.

Q. If it was May or June then Mr. Lenteni hadn't been there but about a month or two with you, had he? At that time?

A. He would be, yes, at just about that time.

Q. Reckon why Mr. Lenteni said September?

A. I don't know.

Q. Now, was he correct in his statement that you all drove out there together?

A. Yes, sir.

Q. What did you take Mr. Lenteni for?

A. I was headed up there and he came along with me.

Q. Didn't you have any work for him to do at the warehouse at that time?

A. I can't remember. Maybe I didn't.

Q. Did you take him along to bring back that 8 x 8 x 8 box? Was that his job in going?

A. He came along with me sir.

Q. Or were you going to give him instructions on the nature of the merchandise that you were fixing to pick up? What was the purpose?

A. He happened to be with me.

Q. I see. No particular reason?

A. Not that I could honestly give you now.

Q. Now when you got out there you left Mr. Lenteni in the car, I believe he said.

A. I can't account for his acts except being with me.

Q. And you went in. Was there anybody in there when you traded with Mr. Roberts?

A. It's been so long ago that I couldn't honestly say, sir. I don't remember.

Q. But this was the first trade that you made of this kind, wasn't it, where you got these parts with the "P" written on them? You had not ever done that before, had you?

A. With Mr. Roberts, no.

Q. With anybody? Had you gotten any platinum tipped stuff from anybody else before that, under a straight trade with them?

A. I can't off hand recall all of the transactions that has happened.

Q. I see. And you don't remember whether there was anybody out there or not? This was just a casual transaction, in other words, didn't mean anything specially to you?

A. At that time, no.

Q. How long did you stay out there with Mr. Roberts?

A. Maybe—I couldn't tell you. I would be guessing.

Q. Did you tell Mr. Roberts you could use some more of these if he would get them?

A. No, sir. And I believe in all of our conversation it could have been about ball bearings.

Q. About ball bearings?

A. Yes, sir.

Q. Did he have any ball bearings?

A. Yes, sir.

Q. Why didn't you trade him for ball bearings?

A. Because they were rusty, spoiled.

Q. Ball bearings were your business though?

A. Yes, sir. There are various types of ball bearings.

Q. Yes, sir. Did you bring a supply of ball bearings in here too along with this other? Have you got some ball bearings over here?

A. I don't think so.

Q. Now as you went back who carried the box, the 8 x 8 x 8 box, back to your warehouse?

A. I don't know. I couldn't tell you.

Q. Who drove the car?

A. I believe I did. I think we went up in the truck and I generally drove my truck when I was along.

Q. You had a car though, didn't you, too?

A. At that time?

Q. Yes.

A. No, not here. I had a car in Cleveland.

Q. And you drove back and when you got there who carried these things in?

A. I couldn't tell you.

Q. You or Mr. Lenteni?

A. I wouldn't say. I don't know, don't remember.

Q. You just didn't attach any significance to them? Did you all put them in the back end of the truck or carry them in the cab with you?

A. I think they were thrown in the back end of the cab, to the best of my knowledge.

Q You reckon Mr. Lenteni would remember on that?

A. I wouldn't know.

Q. Now if you will give us the details Mr. Lenteni can come in here and give us that same detail, can't he, because—

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Q. Mr. Lenteni was along and he knows the same thing you know about it?

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Q. He was there and had the opportunity of observing the same things you did, didn't he?

A. Yes, sir.

Q. Now let's think hard on this transaction. The size of the box was an 8 x 8 x 8. Was that box handed to you by Mr. Roberts?

A. I don' t know.

Q. Was Mr. Lenteni present when Mr. Roberts handed this stuff over?

A. I don't know anything more except that that's where we bought it. It came to our warehouse from Mr. Roberts. Whether I carried the box out, whether Mr. Lenteni carried it, I don't remember. I don't remember if Mr. Roberts picked it up and handed it to me, but I don't think he picked it up and handed it to me.

Q. And you don't remember who carried it from Mr. Roberts' store out to the truck?

A. I don't.

Q. Sir?

A. I do not.

Q. What kind of box was it, cardboard or wood?

A. I believe it was a cardboard box.

Q. Did it have any government markings on it?

A. I wouldn't remember.

Q. Where did Mr. Roberts say he got the property?

A. I took it for granted that Mr. Roberts was a respectable business man. He's in retail. He kept his door open every day. I never questioned the man.

Q. I just asked you one question. Where did he say he got the property?

A. I don't think I asked him, sir.

Q. I still ask you to answer the question. Where did he say he got the property?

A. I never asked him the question. I don't remember of me asking him where he got it.

Q. I didn't ask you did you ask him the question. I asked you what he said. Did he tell you where he got the property?

A. I don't remember what the man said or anything in reference to the item. I don't.

Q. Then your answer is you don't remember. Now when you got to your warehouse, which warehouse did you go to? How many warehouses did you have at that time?

A. One

Q. You went to your warehouse. Is that the one with the 8 x 8 room in it?

A. Yes, sir. That's the way he described it, 8 x 8. I don't know if that's exactly the size.

Q. Had you set that up for automotive parts in June of 1954?

A. I don't know when it was set up exactly.

Q. Well, it was set up at that time, wasn't it, because that's where you put them?

A. The set up of the warehouse is one room has a partition, that's going to be the ball bearing room, another room was miscellaneous, another small room going to be miscellaneous, third room was for some-

thing else, and the fourth room was going to be aviation, and this little nook was separate of it and was going to be automotive, and—

Q. What I'm asking you, sir now is, within two months after Mr. Lenteni had been with you there did you have the automotive room set up.

A. Yes, sir, I had the automotive room to begin with.

Q. And at that time this item was placed in the automotive room?

A. I believe so.

Q. I believe you testified so.

A. I believe that was where it was placed.

Q. I believe Mr. Lenteni so testified, didn't he?

A. I don't remember. He may have.

Q. Now who took it and put it in the automotive room?

A. The box?

Q. The box?

A. I wouldn't know.

Q. You keep that room under lock and key don't you?

A. He had access to it. He had a key to the room. He had a separate set of keys besides myself.

Q. I see, and you just didn't attach enough significance to this stuff to say whether you put it in there or whether he put it in there. Is that correct?

A. That's right.

Q. Well, if he put it in there instead of you did he do it under your instructions?

A. I don't remember.

Q. Well, if you caught him putting miscellaneous stuff in there that wasn't automotive, would you have tolerated that?

A. He was setting up the warehouse with my instructions, and if the man would put something over here that I figured should go there, I would just tell him we should have it over here, let's put it in that room, or we'd have ball bearings—in fact we have ball bearings in that warehouse scattered around now.

Q. Now this thing stayed there in your automotive room, according to your own testimony, from June until the time when you shipped them, the two thousand of them, to Consolidated? Is that correct?

A. I believe so.

Q. In other words they stayed there some seven months, six or seven?

A. Could have.

Q. Sir?

A. Yes, sir.

Q. Now when you got ready to sell these you called over long distance telephone?

A. Yes, sir.

Q. To Mr. Ritts back there, didn't you?

A. Yes, sir.

Q. And what did you tell him you had?

A. I told him—I think I sent him an item and asked him if he could use it, a sample.

Q. Are you positive of that?

A. That's the only way Mr. Ritts would know, cause I don't remember ever saying the number until after I sold it and found out the number, and then I found from Mr. Ritts that that is a 10-20236, or whatever it is, 20236. I believe

Q. That's the first time you knew what you had, this thing with the "P" marked on it?

(Reporter: Are you nodding your head?)

A. Let's put it this way; with a 30c value I never paid must attention as far as the metal is concerned.

Q. Now, I'll ask you how much business you had done with Mr. Ritts prior to January, 1955? Had you ever sold him anything before?

A. January 20, 1955?

Q. Yes, sir.

A. I think I shipped him some materiel.

Q. When?

A. The invoices will verify that.

Q. Now I'll ask you, did you send him a sample of this prior to your telephone call?

A. I'm under the impression that I have.

Q. What did you call him for over the phone?

A. I don't recall the exact information, or the exact conversation.

Q. Why did you call him?

A. I probably called him on the base.

Q. Sir?

A. On the base.

Q. I said why did you call him?

A. Oh, I don't know for any number of things. Let me get that question straight.

Q. I'm asking your purpose in making a long distance call. If you had already furnished him a sample why did you call him over long distance?

A. Oh, I couldn't honestly say why at that particular time. Maybe to see if he could use that materiel, or anything.

Q. Well, didn't you call him because you urgently wanted to sell it?

A. I may have.

Q. I'll ask you was that one of the calls where you asked him to wire you the money?

A. I don't remember Mr. Evans.

Q. I would like to know how it is that when you have things like this to sell, in that quantity, you would hold them from June until January when you were needing money so bad that you were calling over long distance and asking people to wire you the money?

A. You are bringing out a point—I didn't need money so bad.

Q. Well, why would you have them wire it?

A. When?

Q. Well, on January 12, 1955 you shipped 754 Bosch springs to Mr. Ritts. Wait just a minute now. (Looking at papers.) On December 20, 1954, didn't you receive a telegraphic money order by Western Union Telegraph from Mr. Ritts?

A. December?

Q. Yes, sir.

A. Probably before Christmas.

Q. Were the charges on that $7.29?

A. Possibly.

Q. Well now at that time you had these items, didn't you?

A. Yes, sir.

Q. And it didn't occur to you to sell them to Mr. Ritts?

A. I may not have given it a thought.

Q. Your sales to Mr. Ritts were insignificant compared with your sales to Mr. Harry Paster, weren't they?

A. I can't give you an honest comparison because I haven't checked the Harry Paster sales that I had made to him on electronic merchandise at that time.

Q. Normally you sold this kind of materiel, referring to Exhibit 4, to Mr. Paster, didn't you?

A. No.

Q. You didn't?

A. No.

Q. As a matter of fact you started doing business on this kind of materiel only in December with Mr. Ritts, didn't you?

A. I believe so, yes, along in December.

Q. Who were you doing business with before that?

A. That's my sales of that kind of materiel to Mr. Ritts. I have no other recollection of selling any other.

Q. You mean the Government has charged you in the indictment with all of the sales of platinum that you have ever made?

A. I don't know. I have checked, I have asked my attorneys did we go thru everything. They said, whatever's in the indictment.

Q. You never did get an invoice from Mr. Harry Paster up there showing any platinum on it, did you where you sold to him?

A. I think all my transactions with Mr. Paster are on file.

Q. You never did borrow any money from Mr Ritts, did you?

A. No. All you were borrowing was from Mr Paster. Why didn't you sell Mr. Paster this platinum? He was your friend. Why did you sell it to Mr Ritts?

A. Mr. Ritts specializes in this kind of materiel, has sold it as a usuable item, not as an item of metal.

Q. Yes, sir. What about spark plugs? Did you ever sell any platinum tipped spark plugs to Mr Paster?

A. I may have sold a few.

Q. How many?

A. I wouldn't know; very few.

Q. Any substantial number?

A. No.

Q. Along about that time you knocked off doing any substantial business with Paster, didn't you?

A. Along about what time, sir?

Q. Along in December, when you started to handling this with Mr. Ritts?

A. No, I think that we have done business with Mr. Paster. C. T. Sales has done considerable amount of business with him.

Q. Yes, sir. So your defense to this one charge that is perfectly plain against you, that you got these 2000 or a part of these 2000 from Andrew Jackson Wright and sold them to Consolidated, your answer to that part of the charge is that you got 2000 from Roberts and that's your title, and that's the ones you actually sold to Consolidated?

A. Yes, sir.

Q. And that if Mr. Wright claims he gave you these that he's erroneous in that testimony? And you couldn't have bought these in a bunch of scrap materiel and gathered them together? These are the ones that came from Roberts? As far as that part of the charge is concerned, is that correct?

A. Yes, sir.

Q. Now then, let's review your accounting of where you got the 200 American-Bosch breaker point springs from that Andrew Jackson Wright says he delivered to you, and that the Government contends were shipped, along with 754, to Consolidated on December 20. Don't you have a specific contention as to where you got the 754 American-Bosch breaker point springs from?

A. Same place that the man described them. That's the best of my knowledge. Shown to me in my warehouse, and that's it!

Q. Well, where did you get those from?

A. They came from the base, is the only answer I know. The man said, "This is what I found in a box", and that's it.

Q. Now you say you got these from Roberts, that item there. Now this is the item I'm talking about now, Govt. Ex. No. 8. You have been helpful on this and we haven't had to go into all that trash down there. You have told about Mr. Roberts, getting them from Roberts. Now I want to know where we got these from, Govt. Ex. No. 8, because you admit you sold seven hundred and something of them to Consolidated.

A. To the best of my knowledge I came into the warehouse, the man says "There they are", says "I found these in opening up a box, and what do you think these are?" And that's the best of my knowledge how they came to be in the warehouse

Q. When was that?

A. I wouldn't say when. I made the first shipment of a hundred to Mr. Harper around the 17th of November, I believe.

Q. 17th of when?

A. November, somewhere along there. Then I sold the balance of them to Mr. Ritts.

Q. You sold 100 that you sent by air mail special delivery to Texas?

A. Yes, sir.

Q. On December 1?

A. I think it was in November, sir.

Q. In November. Why didn't you sell him all of them?

A. I only offered him 100.

Q. Why did you want to keep the rest of them?

A. It's a general practice. You may have a large quantity. I only figured Harper could use a hundred, that's why I offered him a hundred. I may have offered him more, I don't know.

Q. How long had you had them before you offered them to Harper?

A. I wouldn't know positively, to be truthful about it. I couldn't honestly say

Q. You what, sir?

A. I couldn't tell you how long.

Q. Well, when you ran into some platinum stuff when a fellow said to you, "We just got this out of a shipment out at the Base", and you looked at it, and you knew what it was when you looked at it, didn't you?

A. I did not.

Q. You didn't know?

A. No, sir, not at that time, because I'm not an authority on that, believe me.

Q. You knew you weren't suppose to have bought anything like this didn't you?

A. I don't know why I should say that I wasn't or was. I honestly can't answer that truthfully

Mr. Evans:

Will you lend me the magnifying glass again Mr Miller. Thank you.

Q. Now we are referring to Ex. No. 8. I wish you would look at that and see if it's stamped up platinum? Wnat platinum marking is on it, manufacturer's marking?

A. I don't see any marking on here right now, to be honest

Q. Look around the edge of it.

A. I don't see any marking on it.

Q. No marking on it?

A. I can't see it. I may be wrong but I can't see it.

Q. Have you ever seen one with it on it?

A. I never paid that much attention to it.

Q. Because you automatically know what it is. They don't make them except platinum tipped, do they?

A. I don't know.

Q. You don't know?

A. There's no stamp on it. On the other bases I have admitted they have plat stamped on them. I haven't seen any p l a t stamped on there to give me any inkling—

Q. I'm not talking about p l a t; I'm talking about the manufacturer's marking on the edge of the rim?

A. I don't know. I can't see it. You want me to look again?

Q. I wish you would. If it's on there it would save us getting somebody else to do it.

A. (Looking at it again - with the magnifying glass.) I can't see any markings, sir.

Q. All right. Now if you will, sir, we are going to talk about this, because you are accused by Mr. Wright, or rather Mr. Wright states, that he stole some of them and brought them to you. The Government's contention is that that's what happened. You say that it didn't happen, and I'm asking you now, just in your own words, to account for it, if you can, and give me the details on it. Who was the man that told you that he had found this? How many did he claim he found? 1028, wasn't it?

A. That's what I heard him say.

Q. Who was the man? Mr. Lenteni?

A. Mr. Lenteni.

Q. And when was that?

A. I couldn't tell you the exact date.

Q. Well, was it in June, September, or approximately when was it that he made that discovery?

A. Prior to my shipping them. That's the best that I would say.

Q. You couldn't give any answer other than prior to the time you sold them?

A. Yes, sir, it was prior to the time of the first shipment.

Q. Well, tell me what happened when he discovered them? What did he do with them?

A. The best that I know of it, he said, "Joe, I found these over there. What you think they are?"

Q. What did you tell him?

A. I said they looked like breaker assemblies. I went over and took a scintilla, broke it apart, there's the spring, there's the base. I said, "It's evidently one of these things. It is a spring from a breaker assembly", and that's my recollection. I found the numbers, some of them. And that's the answer to it.

Q. In other words you recognized that it was a breaker spring?

A. Yes, sir.

Q. Where had he put them?

A. I don't remember just where he put them.

Q. Did he bring them in there in the original box or how did he bring them in there to you?

A. I don't remember. They were in a box, paper carton.

Q. In a paper carton?

A. I believe they were in a paper carton, to the best of my knowledge.

Q. How big was it?

A. Guessing, 12 x 12 x 15.

Q. And you can't tell me whether it was June or whether it was September or December that he found them. Can you give me any idea on that?

A. The gentleman found them before the time of my first shipment which I contend is in November, and trying to place me against the particular date, I know that the merchandise was in there for a short while. I would go along and say probably September or October, and I would say within that length of time.

Q. Was it before or after you got these things from Mr. Roberts, the dead man?

A. Which, the springs?

Q. Yes.

A. They were after I got them from Mr. Roberts.

Q. Now was there anything unusual about this nice surprise that you had from Mr. Lenteni? It was a surprise, wasn't it, that that would be in the shipment?

A. It would be, yes.

Q. In the lot?

A. It would be yes.

Q. Did he put them under your desk or leave them in the desk drawer, or put them on top of your desk?

A. It wasn't in my desk, but I wouldn't remember just where he placed them.

Q. Well, how much did you figure that these 1028 springs were worth to you?

A. At the time of seeing them I did not know.

Q. You knew they were platinum, didn't you?

A. I assumed they were, but I wasn't positive.

Q. And if they were platinum what did you figure that they were probably worth?

A. I didn't make no estimates. I tried to get a bid on them.

Q. You figured they were worth several hundred dollars, didn't you?

A. Yes. At that time, if they had any platinum in them they would be worth that kind of money; if they haven't got no platinum in them they might be used for parts, I didn't know.

Q. So what did you tell Mr. Lenteni to do with them?

A. Mr. Lenteni ran that warehouse quite a bit to his own idea as to where to put merchandise, and if he took them and put them some place, he was satisfied.

Q. You left it up to Mr. Lenteni?

A. I left a lot of things up to Mr. Lenteni, yes, sir.

Q. I see. And then you left them there for a few months and then you decided that you would sell a hundred of them. You sold a hundred of them to Paster—I mean to Harper?

A. It is customary that you never put the exact amount of material on a lot of things and Mr. Harper, I believe told me to sell him a hundred of them.

Q. What did you get for those hundred?

A. $125.00, a dollar and a quarter a piece.

Q. Then how long after that was it you decided you would sell the rest of them?

A. Whenever I shipped them I wanted to liquidate because we got to talking of starting a corporation.

Q. And you thought of your platinum stuff immediately when you wanted to get some money for the corporation?

A. No, not necessarily.

Q. Well, that's one thing has always got a market, hasn't it?

A. Ball bearings have a nice market, pumps, various kinds of aviation pumps have a nice market.

Q. I understand there are other things that have a market, but platinum does have a good market?

A. Yes, but you keep talking about platinum where there's one or two buyers. In this other material you have a field of fifty or a hundred buyers.

Q. Who are the buyers in the platinum field outside of Mr. Paster?

A. I don't know, as far as platinum buyers are concerned. I'm referring to parts. I keep insisting I'm speaking of parts. Mr. Ritts specializes in magneto parts. He's the logical man to offer the merchandise.

Q. And the logical thing to do if you have got platinum bearing parts is to sell as much as you can for parts, but if the market won't take it then you sell it to Mr. Paster to melt it down, don't you?

A. No, I haven't been selling anything to—er—to Paster, as far as platinum is concerned, any more than what he has invoices from me, and whatever it is, I doubt if he has very little of it.

Q. In other words, as long as you do sell Harper your parts at parts prices it would pay you to sell to Harper rather than to Paster, wouldn't it?

A. I have sold what I had to gentlemen that are in that field.

Q. And if you could get some delivered as parts, rather than for their platinum value, to Mr. Ritts, you would get more out of them than you would to scrap them to Paster, wouldn't you?

A. I didn't ask Mr. Paster anything about these. I wasn't comparing Mr. Paster to Mr. Ritts.

Q. Now then you shipped 754, you say, of that same spring there after you had sold them to Harper, after

you had sold him a hundred, on December 1st, on December 20th you shipped 754 of them to Consolidated. That's Mr. Ritts? That's correct, isn't it sir?

A. Yes, sir.

Q. You telephoned him over the phone, long distance?

A. I don't remember sir. C. T. Sales telephone bill of the last fiscal year was two thousand dollars.

Q. C. T. Sales wasn't in existence at that time, was it?

A. Biggest part of the sales in surplus are done over the telephone.

Q. Answer me that question. Was C. T. Sales in existence in December of 1954?

A. No, sir. I'm sorry.

Q. Now at the time that you talked to Mr. Ritts over the telephone about the 754 breaker points did you also talk to him at that time about this item here?

A. I don't remember sir.

Q. That was platinum.

A. I don't remember sir.

Q. That's Govt. Ex. No. 4 I'm referring to. You had it in stock at that time?

A. I may have not paid any attention to it, but I don't remember a telephone call.

Q. It was sitting in the little 8 x 8 room at the time?

A. Yes.

Q. Wasn't it sir?

A. Probably.

Q. What did you do with the rest of the breaker point springs?

A. I can't account for them. I don't remember. This is all I have shipped to the best of my knowledge. I had some here, whether it came from the same order or not, I don't think so.

Q. You and your man counted 1028 of them?

A. I never said I counted them. I'm only using his figures.

Q. I see. And you sold out of that 854?

A. Yes, sir.

Q. When he came to you he told you he had counted 1028 of them, didn't he?

A. I don't remember what he said at that time. I don't remember the conversation, sir.

Q. Wasn't the very reason that he was going into that box was to take inventory and to take a count? Wasn't that what he testified here?

A. Probably he did.

Q. And he was making up an inventory and he found 1028 of them. Did you ask him how many were there when you got that surprise from him, when you discovered a bunch of platinum in a bunch of junk that you had bought?

A. It's so far back I couldn't remember.

Q. You just picked up—just like finding an Easter egg, over a thousand dollars worth of stuff that you knew you weren't supposed to have, and that didn't impress you?

A. Over a thousand dollars worth of merchandise, at that time I did not know the value of the item when I saw it.

Q. I thought you said you recognized that it was a breaker spring and was probably platinum?

A. I did not quote the value. I did not know what the value of the item was.

Q. And you didn't ask the count?

A. I don't remember of any discussion about it.

Q. So you don't know what went with the remainder of those springs?

A. I don't remember. I don't know.

Q. Have you got them now?

A. I wouldn't know. I don't think so. I don't remember. I thought I shipped the balance of them to Mr. Ritts and I don't remember of any more of them.

Q. Yes, sir.

A. If there are, they might be thrown in my warehouse, but I don't know anything about them.

Q. Now these motors that Mr. Wright claims he brought to you, motor gun chargers, do you know whether or not he stole 15 motor gun chargers from Lot 15 out there and took them to his apartment?

A. No.

Q. I believe you deny that he brought them to you?

A. Yes, sir, he did not bring me no motors.

Q. The motor gun charger that the FBI found in your room was in the closet, wasn't it?

A. With other samples, yes.

Q. Sir?

A. Yes.

Q. Why did you have it up there in the room, the one that you had? I'm referring now to Govt. Ex. No. 6.

A. In the winter time I wear a heavy coat. We had no heat in the warehouse. Walking around the warehouse I many times put items in my pocket. The lady that was doing our typewriting or us, I had the motor and I had the letter typewritten and evidently took the motor down to her to get the number and that's how come it came to be in my room to the best of my knowledge. Came in my coat pocket. I wore a heavy coat. I would be willing to show you the coat pocket, the coat.

Q. How long had you had it there?

A. At least—that motor must have came into my room around the first of March, not sooner than the

25th of February because I have communications where I offered that motor for sale. I believe it's dated on the 25th of February.

Q. That motor cost the Government roughly $20.25 a piece, doesn't it sir?

A. I heard a gentleman swear to that.

Q. Where did you get that particular motor, the one that was in your room?

A. From Mr. Herndon, Quality Supply.

Q. When?

A. My invoice reads Feb. 25, is when we negotiated that deal.

Q. Where is your invoice on that? (Mr. Miller handed Mr. Evans a paper.) Is this, Deft. Ex. No. 31, the place that you say you got that motor?

A. Yes, sir.

Q. That's in one lot of approximately 1000 pounds of miscellaneous items, "filters, gaskets, motors, erectors, brackets, dome, plugs, spacers, etc. and compass. In exchange for above merchandise we received 3 each Wisconsin 4 cylinder air cooled engines, Type AC-4." Is that correct?

A. That's the invoice and it came out of that deal.

Q. This was a trade between your former business associate, Mr. Herndon, operating as Quality Supply Company and C. T. Sales, Inc.?

A. Yes, sir.

Q. I'll ask you sir, when this invoice was made up?

A. I think around that time.

Q. Was it delivered with the merchandise?

A. I don't think so. I think it was delivered after the merchandise.

Q. How long after the merchandise?

A. I wouldn't be able to tell you.

Q. Who made this up?
A. Mr. Herndon, I assume.
Q. Were you there when he made it?
A. I don't think so.
Q. How did you come into possession of this particular paper here, Deft. Ex. No. 31.
A. Mr. Herndon, Quality Supply.
Q. Did he give you this personally?
A. Whether he gave it to me or to my partner, I believe it could have been possible he gave it to me. I don't quite exactly pinpoint it, but I assume that he gave it to me.
Q. Did you show this to the FBI when they called on you about these motors?
A. I was willing to show it to them. In fact I was willing to take Mr. Powell back to a room and show him the motors that I have in stock, approximately over 2000, and prior to my arrest I wasn't asked whether I received any motor. In fact, when Mr. Powell talked to me in September I didn't know what motor I was arrested for, to be honest with you, because at that time I asked Mr. Powell.
Q. Well, I'll ask you sir if you know where all of this materiel came from here? If you know where it came from sufficiently to testify then what is the purpose of all this stuff over here that has been brought in here, cluttering up the Court room?
A. Purpose is that it is materiel that we have, the same materiel in stock today. A lot of this materiel—as far as the small motors are concerned, we have in inventory right now, I would say, between all of them over three thousand motors.
Q. What I'm asking you is if you bought these motors from Mr. Herndon, or rather made an exchange, it wouldn't make any difference how many

of them were down there in that stuff. The question would be whether or not you bought from Herndon wouldn't it, as to whether you were guilty, or whether they believe Mr. Wright. And on the other hand if your man Lenteni opened this up in a package and you bought this from Mr. Roberts, the dead man, then what is the purpose of all this other stuff here?

A. You mean the magnetos?

Q. Yes, sir.

A. Because the magnetos have breaker assemblies. We also have some of this materiel in stock today that we are being accused of. You buy materiel on that base you are liable to get anything, it's possible.

Q. Where did you get these from?

A. They came in a box of followers.

Q. This is Govt. Ex. No. 1. They came in a box of followers? Did you buy them on invitation bid?

A. I believe they came in on spot bid.

Q. Who opened those and found them?

A. Lenteni, I believe, because it was his job to do it.

Q. When?

A. I wouldn't know. Honestly, I don't remember the dates.

Q. Did he come to you with this platinum when he found it, Govt. Ex. 1?

A. He opened up a box of followers.

Q. Yes, sir. I asked you did he bring it to you when he found that bunch of platinum in there that wasn't supposed to be there?

A. I don't remember the transaction, sir.

Q. How many of them did he find?

A. I don't quite remember.

Q. Did he put them in your desk?

A. No, I don't—I don't think he did. He may have.

I wouldn't be honest about it. I don't remember.

Q. Do you know Mr. Wright is accusing you of having put him up to stealing these, that he delivered them to you? And you are denying that, aren't you? (No answer.) Are you?

A. Could I ask a question?

Q. I say you heard Mr. Wright's testimony. He said that Clot was the man that told him to get some of these. He brought them over to Clot and then he said that Clot said to give them to you, that you were the man. You remember his testimony?

A. I heard his testimony, yes, sir.

Q. You are denying the truth of that, aren't you?

A. I can't account for what Mr. Clot told Mr. Wright, or anything, but Mr. Wright never brought me any of this materiel.

Q. Yes, sir. And you say you know where it came from. You say that Mr. Lenteni opened it in a shipment?

A. Yes, sir.

Q. All right sir. Now tell us about that.

A. Mr. Lenteni done that.

Q. I've got a right to know from you too, though.

A. The only answer I know, Lou tells me that he opens up a box, and "here we are, Joe. I found these in a box." He was getting a box lined up there and told me that I—I don't know whether I was there or some place else. I don't remember.

Q. Can you tell me when it was?

A. Honestly I can't.

Q. With respect to the Roberts transaction, was it before or after the Roberts transaction?

A. I would say it's after the Roberts transaction.

Q. With respect to these springs where he found 1028 springs, was it before or after that?

A. I wouldn't know.

Q. That's platinum, isn't it? On Govt. Ex. 1, the contact points on there, they are platinum, aren't they?

A. According to Mr. Scruggs instructions to me at the Base at one time, he told me that they passed a laboratory test on this and found no platinum in there. I don't know. If there's a stamping on here, I couldn't say.

Q. Well, after Mr. Lenteni found that what did you have him do with it?

A. I guess he put them away.

Q. Where did you have him put them?

A. He may have put them in the automotive room.

Q. How many of them did he find?

A. I don't remmber.

Q. When he brought them to you how big a box were they in?

A. I don't remember.

Q. Could you determine then whether or not they were platinum?

A. I never said too much about them, because I don't remember too much about them.

Q. Who did you sell those to?

A. I don't remember selling them. I would have to check papers, whether I sold them or not.

Q. You don't recall ever having sold any of those at all?

A. I don't recall whether I have or not. I wouldn't say, to be honest. I don't want to guess.

Q. Yes, sir. So you don't contend that any of this materiel was in your stuff that you brought down here from Cleveland, do you?

A. Any of this right here?

Q. Any of that right there?

A. No, I don't, to the best of my knowledge.

Q. In other words, you account for this as having been bought under invoice represented by Deft. Ex. No. 31? That's Govt. Ex. 6, the gun motor; and this spring, Mr. Lenteni found?

A. Yes.

Q. And this breaker assembly Mr. Lenteni found?

A. Yes, sir.

Q. And this part here, Govt. Ex. No. 4, you got from Mr. Roberts?

A. Yes, sir.

Q. So you don't claim you bought any of this from—what's the preacher's name that you had up here, the electronics expert?

A. Are you referring to—

Q. Hendrix is it?

Mr. Miller:
Strickland.

A. Strickland. You mean that particular motor?

Q. I'm talking about this whole business?

A. I didn't buy none of that materiel from Mr. Strickland. I bought a motor similar to that motor.

Q. So after all there wasn't any particular reason for Mr. Strickland to come up here, was there, because he didn't have anything to do with any of this, did he?

A. Mr. Strickland, he sold me some spark plugs.

Q. Yes, sir?

A. He sold me some small motors.

Q. Yes, sir. This type small motor?

A. Not that particular type, no, but he did sell me some small motors.

Q. Now I take it that all of this other stuff that's been brought in here has been in defense of your sale

of the spark plugs, all these packages of stuff and everything of the kind?

A. In the defense—could I ask a question?

Q. Yes, sir. To account for how you happened to have the spark plugs to sell? That's the only reason it was brought in, isn't it?

A. It was brought in here to show that we still have that kind of materiel and it's still being sold on the Field and it's still possible to buy it. There's thousands of motors have been sold in the last four months on that Field. I would say from last September, thousands of motors.

Q. But what has that got to do with it? If you are coming in here telling us that you bought them from a former partner of yours, what has that got to do with it, that thousands are being sold out there today?

A. Because I own them. I own quite a few motors. There's no insignificance that this motor is of any more importance to me than any other motors. I bought the things for 80c from the Field.

Q. When did you actually start in business with Mr. Clot?

A. Referring to when we actually had some deals together?

Q. Yes, sir.

A. That I bought from him and sold to him, or—

Q. Yes, sir, when you started in business with him?

A. I think that was in '52—'53. I would say '52 or '53.

Q. That was before you came down here?

A. Yes, sir.

Q. When did you all go in business together?

A. We bought some merchandise in—I'd say November of '54. Then we went ahead and decided

to make the corporation in January, right after Christmas.

Q. Yes, sir. I believe that's the corporation you said in the first fiscal year of operations made $2,000-:00?

A. Yes, sir.

Q. Now is Mr. Clot a friend of Mr. Paster's?

A. Mr. Clot, I don't think, is any more a friend to Mr. Paster than any other surplus dealer is with another one.

Q. I see. He's like you, he never did have very much dealings with Mr. Paster?

A. He has sold to him occasionally, whatever materiel he had. He may have sent him a trailer load of merchandise.

Q. Now you started setting up your corporation your C. T. Sales, I believe it is, isn't it? That's Clot and Tomley?

A. Yes, sir.

Q. In February, 1955?

A. Latter part of January. Mr. Jessup set up the corporation papers.

Q. Now was Mrs. Turner in that corporation?

A. She's the official secretary. She has one share of stock.

Q. I see. You and Clot own the stock?

A. We each own 49 per cent.

Q. I see. And who is the other 1 per cent?

A. Mr. Anderson.

Q. Mr. Anderson?

A. Yes, sir.

Q. How much capital did you put into C. T. Sales?

A. We each went in a thousand dollars worth of capital, four thousand dollars worth of inventory.

Q. Four thousand worth of inventory? Was that your total inventory at the time you made up the corporation?

A. No, I still maintained some inventory in my warehouse. We are speaking of the 1st of February, 1955.

Q. Well following your going into that corporation did you continue to do business privately too?

A. Not too much sir, not too much.

Q. Did you keep a separate warehouse?

A. I maintained a warehouse down at that Field, yes, sir.

Q. Your little 8 x 8 room, whatever it is, has any of the contents of it ever been put into C. T. Sales?

A. You mean that merchandise sold thru C. T. Sales, or something? Would you clarify the question to me?

Q. All right sir. Did you put the inventory that you had in your little 8 x 8 room in C. T. Sales? Did you put it into the Corporation?

A. No, I don't think—

Q. Sir?

A. I don't quite understand the question.

Q. You said that you put $4,000 worth of inventory into C. T. Sales out of your business?

A. Yes, sir.

Q. I asked you was any of that from the 8 x 8 room?

A. No, sir.

Q. You kept the 8 x 8 room as your own private operation, didn't you?

A. I kept the whole warehouse, which I still keep, which is still over there. The whole warehouse is over there. When C. T. Sales started they started in a completely new warehouse.

Q. Where did the $4,000 worth of inventory come from that you put in?

A. The inventory that was bought on January was put in that warehouse to start C. T. Sales; what was between barbed wire, that we bought off of the base.

Q. You didn't take any of your inventory and put in there?

A. I took a few items, but the merchandise that we bought during December, I believe, and January, that went into the mess hall, which was set up.

Q. Well, you actually went into C. T. Sales as a business before February, didn't you? You and Clot started to doing business to accumulate the stuff for C. T. Sales before you put your corporation up?

A. Well, if a matter of a couple of weeks to clarify the papers, yes.

Q. And you started off with a thousand dollars plus four thousand dollars worth of inventory. Well, did you put $5,000 into the corporation?

A. We put $1,000 worth of cash and $4,000 worth of inventory.

Q. I still don't get where the $4,000 worth of inventory came from.

A. Merchandise we bought during December and January that went into the mess hall, plus some inventory I pulled from my warehouse, bearings and pumps. That created an inventory there because Mr. Clot has a warehouse about 120 x 40, the mess hall. In other words one warehouse had about 10,000 square feet, 12,000, another one had about 10 or 12,000 square feet, and we centered our operations. I maintained my own warehouse and Mr. Clot maintains one warehouse and this other one was C. T. Sales. We both quit buying under Joe Tomley or Clot. Everything came C. T. Sales from then on.

Q. Did you borrow any money to put in that corporation?

A. Did I borrow any money?

Q. Yes, sir.

A. I got some money from my sister, as I told you before, and she owns a note. At that particular time I don't know just whether I borrowed it from her right then or whether I accumulated it.

Q. Now I'll ask you, sir, did Mr. Stauble, Mr. Jake Stauble, work for you?

A. He may have worked for Bob and I.

Q. He may have?

A. He worked for Bob and I, I believe, yes, the corporation.

Q. You believe he did?

A. Yes, sir.

Q. Or do you know he did?

A. He did, yes, sir.

Q. All right sir. When did he work for the corporation?

A. I would have to check into the books on that.

Q. At the time you were arrested he was working for the corporation, wasn't he?

A. No, sir. No.

Q. He was just out of the hospital with a heart attack?

A. He did have a heart attack yes. He wasn't working for nobody.

Q. You know Mr. Stauble pretty well, don't you?

A. To break bread with him, no. To associate with him on the outside, to take him to dinner, no.

Q. You have spent the night in his room the night the FBI was looking for you, didn't you?

A. I went to sleep.

Q. In his room. Don't you know him pretty well?

A. No, sir.

Q. What were you doing, when the FBI was after you, going to his room and sleeping there all night?

A. The FBI saw me at midnight. Never said a word to me. I called up my attorney. My attorney said "stay put".

Q. You say you don't break bread with Mr. Stauble but when the FBI was after you you went to his room in the Macon Hotel instead of going to yours to spend the night, didn't you?

A. Would it make any difference?

Q. Yes, sir, I think it would. All I want to know is just the truth of whether you did or didn't.

A. I was in the room.

Q. You went to his room?

A. Yes, sir.

Q. And you spent the night there, didn't you?

A. I may have gone there about three o'clock in the morning.

Q. Well, what time you slept that night you spent the night there, didn't you?

A. Yes.

Q. And you know him pretty well, don't you?

A. No.

Q. Tell us why you had to go to his room

A. Beg pardon?

Q. Tell us why you went to his room to spend the night if you didn't know him well.

A. Because I went up there and laid down and went to sleep.

Q. Accidentally went to sleep?

A. I wasn't undressed. I was in my clothes.

Q. Well, why would you be going up there?

A. I called up my attorney and he said "Stay put".

Q. Who did you call up?

A. The attorney. You want his name?

Q. Yes.

A. Mr. Jessup.

Q. Nothing wrong with him telling you whatever he wants to tell you. You called him up and he said to stay put.

A. Right.

Q. What did he mean by that?

A. I wanted him to come down to talk to me. He said, "Wherever you are at, stay put." He came down the following morning and talked to me.

Q. And where were you at when he came?

A. Macon Hotel.

Q. Where in the Macon Hotel?

A. I think down in the lobby.

Q. And you had seen the FBI down there too, hadn't you?

A. Mr. Powell saw me there, yes, sir.

Q. And you saw him?

A. Yes, sir.

Q. And your lawyer told you to stay right there where the FBI was, didn't he?

A. Yes, sir.

Q. And then you went up and spent the night in Mr. Stauble's room. Why did you go up to Mr. Stauble's room?

A. Because I wasn't going to my room until the following day.

Q. Why not?

A. On the advice of my counsel.

Q. Did he tell you not to go to your room? With the FBI there in the same lobby you were in, why didn't he want you to go to your room?

A. I don't know. On the advice of my counsel, I called him up, told him the situation.

Q. Did he tell you to go to Mr. Stauble's room?

A. No.

Q. Well, what made you go to Mr. Stauble's room?

A. For a couple of hours I lay down over there. In the condition I was. Please. I wasn't running away from nobody.

Q. No, the FBI was right there in the Macon Hotel wasn't they?

A. Yes, he saw me.

Q. You went up to Mr. Stauble's room for a couple of hours. Where did you stay in the meantime?

A. I believe in the lobby. I sat in the lobby.

Q. You were pretty conspicuous there in the lobby, weren't you?

A. Yes, sir.

Q. Well, what did your lawyer mean when he said to stay put?

A. He just said to stay where I was at. I told him I didn't want to go back to my room without the attorney.

Q. Why didn't you want to go back to your room?

A. Because I didn't know what was going on. I understand that they were questioning, er—I understand that they were all around there. They were talking to Mr. Clot, and I sat there and nobody said a word to me.

Q. You didn't think you were very secure down there in the lobby of the Macon Hotel if you wanted to stay away from the FBI, did you?

A. No. I didn't know what was the story, therefore I'm ignorant of the fact. That's why I wanted an attorney.

Q. And that's why you left your room and went to Mr. Stauble's room?

A. I don't think I was in my room at the central Hotel that night from six o'clock, prior to six o'clock.

Q. Well, now, can you give me any reason why you went up to Mr. Stauble's room?

A. Any concrete reason?

Q. Yes, sir.

A. Wright never phoned me and offered me merchandise. That night I gets a telephone call. It's Monday. After talking with Mr. Powell on a Thursday prior to that, any man using the telephone offering me merchandise, what do I know what's in the wind? Supposing I was to come into my room and they push a man with merchandise. That's my honest truthful fact.

Q. What's that? Suppose you come into your room and what?

A. Somebody was to take this man Wright and, with some merchandise or whatever it is—I don't know whether the man—I didn't know nothing about the thing. I stayed away to find out.

Q. But you weren't scared Wright might come up there with some merchandise, were you?

A. Beg pardon?

Q. You weren't afraid Wright might come up there with some merchandise with the FBI around, were you?

A. I wasn't afraid of Wright coming up there with merchandise?

Q. Yeah.

A. He phoned and wanted me to have merchandise which I never got before or anything like that.

Q. Is that the reason you left your room, because you were afraid the FBI might take Wright and push him in your room with some merchandise and then accuse you of having bought it from him? Was that why you left?

A. I was available. Mr. Powell saw me. I wasn't in hiding. I was willing to go back at any time. I did go back of my own initiative, the advice of counsel.

Q. Well, all I started out to ask you about on this, you said you didn't break bread with Mr. Stauble, and I was just wondering why you hot footed it to his room when the heat got on you?

A. Beg pardon. Because I lay down on his bed for a couple of hours?

Q. Yeah, yeah.

A. I don't know. I done wrong, probably, I done wrong, In my state of mind that night—I was wrong. I shouldn't have probably gone up there, but that was just what I done.

Q. What was Mr. Clot doing up there?

A. Where?

Q. In Mr. Stauble's room?

A. I went to sleep, sir.

Q. You didn't see Clot?

A. He wasn't in there. Mr. Clot wasn't in there. I went to sleep in Stauble's room.

Q. But Clot was there in the hotel wasn't he?

A. He stayed in the Macon Hotel.

Q. And he's your business partner. Why did you go to Stauble's room instead of his?

A. I can't answer that question, honestly.

Q. You do know Mr. Stauble pretty well, don't you? You do know him pretty well.

A. No, not any more, believe me.

Q. You mean you don't know him any more now. At that time though you knew him pretty well, didn't you?

A. No, sir. Any more than just from a humanitarian standpoint. I called his step father, whatever it is, in Connecticut at my expense that the boy is sick, to do something about him.

Q. Was that what you were going up there for that night, to see whether he was sick or not? (No reply.)

Were you going up there to see about his illness that night, Mr. Stauble's?

A. I've tried to answer the question. It must have been around three o'clock that I went there. I don't remember what time it was that I went into his room, lay down and fell asleep.

Q. That night you and Mr. Clot called Mr. Stauble, didn't you?

A. Beg pardon?

Q. That night you and Mr. Clot—you know who I'm talking about when I say Mr. Clot, don't you?

A. Yes.

Q. You and Mr. Clot called Mr. Stauble?

A. For what? I don't—

Q. I'm just asking you didn't you call him?

A. I don't remember calling Mr. Stauble.

Q. You don't? You had him come over to Clot's room where you and Clot were didn't you?

A. I don't remember.

Q. Sir?

A. I don't remember asking him to come over.

Q. You don't? Well, he did come over, didn't he?

A. He may have.

Q. Sir?

A. He may have came over.

Q. Don't you remember?

A. No.

Q. You weren't asleep then, were you?

A. No, I wasn't. I didn't sleep in Clot's room.

Q. No. You were in Clot's room though, weren't you?

A. Yes, I was in Clot's room.

Q. Before you went to Stauble's room, weren't you?

A. I may have. I don't quite remember. I won't deny it.

Q. Well, let's do remember. You were in Clot's room before you went to Stauble's room, weren't you?

A. I may have been.

Q. And you didn't go to sleep there in Clot's room, did you?

A. No, sir.

Q. And you called Stauble down there, you and Clot, didn't you?

A. I don't know. I don't remember calling Stauble down there.

Q. Do you remember him coming down there?

A. I don't remember whether he did or not.

Q. You don't? You don't?

A. I—he was around, I'll say, but I don't remember calling him.

Q. They lived there on the same floor didn't they, Clot and Stauble?

A. They may have.

Q. Don't you know?

A. I don't know. I don't remember.

Q. You were in both their rooms that night, weren't you?

A. Beg pardon?

Q. You were in both their rooms that night?

A. Yeah. I could have followed from one room. There's more than one floor in the hotel. I don't know if it was on the first or second or third floor.

Q. You don't know whether they were both on the third floor or not?

A. I don't remember whether they were on the third or second.

Q. I see. Well, why did you leave Clot's room and go down to Stauble's room to go to sleep?

A. I don't know. May have been because Bob's jump as anything.

Q. Yeah? He's jumpy you say?

A. Bob is jumpy.

Q. He makes you nervous? Bob Clot is jumpy and he makes you nervous?

A. Well, probably if I fall asleep he would be waking me.

Q. I see. So you don't remember as to whether they were both on the same floor or not?

A. I don't, honestly.

Q. And you don't remember whether Stauble was down there that night or not?

A. Stauble was all around the place, but I don't remember calling him.

Q. I see. But he was in the room, Clot's room?

A. I don't remember.

Q. Do you remember him coming in and you and Mr. Clot were in there talking about your shipments to Paster and Stauble saying, "If I'm interrupting I'll get out"; and you all said, "No, we've got some things we want you to do for us". You remember that?

A. No, sir.

Q. You don't remember a thing about that?

A. No, sir.

Q. You didn't talk that night at all about your shipments to Paster, you and Mr. Clot?

A. No, sir, not that I know of.

Q. You didn't talk about any invoices that were coming thru the mail?

A. Not that I know of.

Q. Not at all? And you didn't talk to Mr. Stauble about some things that you wanted him to do for you?

A. I don't remember. I don't know what you are trying to get at.

Q. This was about three o'clock in the morning. How long did you stay there in Mr. Clot's room before you went down to Mr. Stauble's room?

A. I don't know.

Q. Do you recall having left Mr. Clot's room that night?

A. Yes, sir, I left Mr. Clot's room.

Q. Where did you go when you left his room?

A. I think I went to—laid down on Stauble's—Stauble said he's not going to be using his room, he said to go in there and lay down. I remember that. I went in there and laid down and went to sleep.

Q. I see. He wasn't going to be using his room, but he invited you to go in there and lay down and to go sleep? You didn't talk to Stauble any that night to speak of in Clot's room?

A. I—I don't know what I could have been saying. He was no objective with the concern. He was nothing to me. I didn't know what it was all about. I still didn't know after it was all over what it was all about.

Q. And the reason you didn't go down to your room and spend the night, which was down at another hotel, was because your lawyer advised you not to?

A. Right.

Q. Did you tell your lawyer that the FBI was up there in that hotel too, in the Macon Hotel?

A. I may have. I asked Mr. Jessup to get this thing—something is going on, I wish I could know more about it. Will you come on down.

Q. Did you ask Mr. Stauble to go down to your room and Mrs. Turner's room—her's adjoins yours at the Central Hotel, didn't it? Let me not confuse you. Mrs. Turner at that time had a room that was adjoining yours there at the Central Hotel, didn't she?

A. Mrs. Turner had Room 231 at that time and I had Room 233.

Q. They adjoin?

A. There's two doors between them, that as you find in the Central Hotel, quite a few rooms of the same sort.

(Recessed 1:00 p.m. May 10—9:30 p.m. May 11.)

Q. Mr. Tomley, shortly before you were arrested you made a trip to Detroit, didn't you?

A. Yes, sir.

Q. You left Macon by air on April 22, did you not sir?

A. I did.

Q. And you are sure of that date because you have a check where you paid for your air transportation, don't you?

A. Yes, sir.

Q Now what was the nature of your trip to Detroit?

A. Strictly a business trip.

Q. Who did you see while you were in Detroit?

A. I believe about two or three accounts.

Q. Who?

A. Barry Surplus I believe is one.

Q. All right sir?

A. Harry Paster.

Q. Who else?

A. I could have saw Aaron Electronics.

Q. Who else?

A. I visited with some friends, I believe.

Q. How long were you in Detroit?

A. Saturday. that day.

Q. Sir?

A. That day. I believe it was—I flew out of Detroit at four or five o'clock in the evening, maybe a little later.

Q. What time did you get in there on the 22nd?
A. In the morning.
Q. About what time?
A. I would say around 7 o'clock, 6:30.
Q. And you left that afternoon?
A. That evening, sir.
Q. That evening?
A. I believe so.
Q. Now have you named all of the people that you saw in Detroit on business?
A. I believe so.
Q. Did you spend any time with people on a personal basis, personal friends?
A. Yes, sir.
Q. Did you see Mr. Max Harley?
A. I wouldn't remember.
Q. You know Mr. Max Harley?
A. Yes, I believe I do.
Q. You what, sir?
A. I believe I do.
Q. You are not sure you know him?
A. What does the man do? Could I ask that question.
Q. You don't know what he does?
A. If you are talking about an automobile salesman there, yes, I may have met him.
Q. Is his name Max Harley? Brother to the woman that was married to William A. Stearns. Do you know who I'm talking about?
A. No, I don't understand that question, sir.
Q. Lives at 449 Peterborough? You know where that is?
A. Off hand no.
Q. Sir?
A. No, I wouldn't say that I do.

Q. You know his telephone number? Talking about Max Harley?

A. Off hand I won't say that I do.

Q. You don't know whether or not Mr. Max Harley and Mr. Harry Paster are business associates there?

A. I wouldn't know about the associations that Harry would have. He could have been in Harry's place while I was over there at some time or another.

Q. I see. You just don't remember much about a Max Harley. You're not sure that you know him even?

A. I'm speaking of a man that is an automobile salesman, that has an automobile lot or something to that reference.

Q. You know whether or not Harley and Bilderback are connections?

A. I wouldn't know.

Q. I'll show you a little slip of paper that is identified as Govt. Ex. 10 and ask you whether or not that is your writing?

A. I don't think so.

* * * * * * * * *

Q. I'll ask you sir, whether or not that number is Mr. Max Harley's telephone number, unlisted number, in Detroit?

A. I wouldn't know.

Q. I'll ask you whether or not this was one of the jobs that you asked Mr. Stauble to do for you, to call this number in Detroit?

A. I don't think so.

Q. Sir?

A. I don't think so.

Q. You don't remember asking Mr. Stauble—

A. No, sir.

Q. —to call some numbers?

A. I don't remember ever telling him to call that number.

Q. You don't? Did you ever ask him to call any?

A. I asked him to call my sister, yes.

Q. You did ask him to call your sister?

A. Yes, sir.

Q. Now you don't know whether when you went to Detroit you saw Mr. Max Harley or not?

A. I wouldn't know.

Q. On that trip did you see Mr. Paster?

A. Yes, sir.

Q. Did you make any deliveries to Mr. Paster on that trip?

A. No, sir.

Q. On that trip did you carry any excess weight, baggage?

A. No, sir.

Q. You just went in there to see him about things generally? What did you go to see Mr. Paster about?

A. Various times he gets aircraft parts and when I hit Detroit I generally stop at his place. We ship to Harry at various times, even today. He's an electronics man. We buy electronics. We do liquidate electronics to him.

Q. I see. Now after you stayed there a few hours then in Detroit on April 22 where did you go from there?

A. I think I went down to see Barry.

Q. Where is Barry?

A. Barry Surplus, he's there on East—

Q. I mean after you left Detroit?

A. I went to Pittsburg.

Q. By air?

A. Yes, sir.

Q. When did you get into Pittsburg?

A. I would say about ten or eleven o'clock.

Q. Did you meet your sister there in Pittsburg?

A. No, sir.

Q. How long did you stay in Pittsburg?

A. I flew in Monday night, went down to my brother-in-law's place, spent the night at my brother in law's place at Ambridge, Pennsylvania, and I left Pittsburg on Monday.

Q. Did you see your sister on that trip?

A. I saw practically the whole family.

Q. You did see your sister then?

A. Yes, sir.

Q. Did you spend any time with her?

A. With my sister Ann?

Q. Yes, sir.

A. Yes, sir.

Q. How long were you there with her?

A. Oh, I would say, er, all day Sunday, after I met her in the afternoon.

Q. And then you left—she works in Ambridge, Pennsylvania, your sister Ann does?

A. Yes, sir.

Q. Works there at Sears Roebuck?

A. Yes, sir.

Q. Now let's get these dates straight. Do you recall what day you left Macon?

A. Friday night, I believe.

Q. And you spent Saturday in Detroit?

A. Yes, sir.

Q. And you spent Sunday around Pittsburg and Ambridge?

A. Yes, sir.

Q. And then you left Sunday night, or Monday?

A. Monday.

Q. You left Monday, and where did you go Monday?

A. Came back here, I believe.

Q. Came back here? That would have been on—let's see, Friday was the 22nd, Sunday the 23rd, Monday the 24th, and I imagine you got back here on the 25th, perhaps?

A. Well, I couldn't say. I believe I got in Monday evening, or Monday night.

Q. The 24th or the 25th. But you did not take any materiel with you for sale on that trip?

A. No.

Q. Now before that, on March 31, 1955, you had left here by Delta C & S for California, hadn't you sir?

A. Yes, sir.

Q. And at that time you carried 3,000 Scintilla breaker assemblies to California, with you?

A. They were air freight shipment, yes, sir.

Q. Sir?

A. They were an air freight shipment.

Q. Those were the ones you had bought from the Rev. Mr. Bilderback, for $2600.00?

A. Yes, sir.

Q. And you sold those in Burbank for $6,000.00?

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Q. Now you sold those six thousand dollars worth of scintilla breakers out in California. Who did you sell those to sir?

A. The bookkeeper has all the records on it, all of the paper work pertaining to that deal. I have

turned it over to Mr. Powell, the representative of the FBI when they were questioning that.

Q. There were full records made of that transaction out there and in your office too, weren't there?

A. Yes, sir.

Q. The full record was there and you were given a copy from these people in California, so you know that they entered that sale of the 3,000 scintillas on their books, don't you?

A. Yes, sir.

Q. Now you say when you went to Detroit you didn't take anything up there and sell it to Mr. Paster

A. No, sir.

Q. I'll ask you whether or not on April 22, before you left to go on that trip, the Rev. Mr. Bilderback came by and called on you and Mr. Clot at your place of business?

A. He may have.

Q. What was his business there at that time?

A. I think he sold us some 11 E materiel.

Q. I'll ask you sir, do you or do you not know whether he was under surveillance by the FBI at the time he came to your place on the 22nd?

A. I did not know it.

Q. I'll ask you, sir, do you or do you not know that an employee by the name of Orr—do you know a negro by the name of Orr, James Jack Orr, Warner Robins? Do you know him?

A. Not that I know of.

Q. Do you or do you not know that he admits having stolen 6850 American-Bosch contact springs on April 19 and April 20 and admits having delivered those to the Rev. Bilderback on the night of the 20th?

A. I don't know.

Q. Have you ever seen 6850 American-Bosch spring points that—did Bilderback have them when he came there to you?

A. No.

Q. Did you take them when you got on that plane?

A. No.

Q. Have you ever sold Mr. Paster anything that he didn't run thru his records?

A. No, to the best of my knowledge no.

Q. Have you ever sold Mr. Paster any platinum materiels, stuff heavily loaded with platinum?

A. Whatever has been sold to Mr. Paster, I believe has been ran thru my records.

Q. That's not what I asked you, sir. I asked you, have you ever sold any of this type of platinum materiel that we are talking about here now to Mr. Paster?

A. To the best of my knowledge I would say no.

Q. At any rate none of it shows on your books, does it?

A. I don't know.

Q. And none of it shows on his books does it? (No reply.) Isn't he the biggest platinum dealer in the country?

A. I would say he works in minerals.

Q. He's your friend. Why haven't you ever sold him any?

A. Because I didn't have any, or if I did have it there may have been times I didn't know what it was.

Q. I see. But you sold to the other people and knew what it was when you sold it to them, didn't you?

A. I sold it to them by spec numbers.

Q. I see. What did you think these three thousand were that you bought from Bilderback, these

three thousand scintilla breakers that you bought from Bilderback?

A. Beg pardon?

Q. What did you think they were? Did you think they were platinum, or not?

A. They were ten dash. To me they were a number, sir, just like a pump or anything else. It's a number.

Q. Now when you and Clot were talking there in the hotel the night that you got worried about the FBI, you were up in Clot's room and either you all called Stauble or Stauble was nosey and came down there to offer his assistance; at any rate when he walked in you all were talking about Paster then and some invoices, weren't you?

A. That night?

Q. That night, yes, sir.

A. I—

Q. That was the night of May 9, about two weeks after you made this trip. Were you talking about Paster and the invoices?

A. The condition that I was in that night, I couldn't honestly tell you if I talked about it or not. I say no, to the best of my ability.

Q. What was your condition that night?

A. After coming back to the hotel, seeing Mrs. Turner being with the FBI agents, four or five fellows, I figured that she was arrested. I couldn't understand the procedure. I myself was in very bad mental condition. I didn't know what it was all about at that time.

Q. Well, could you have written this number down just kind of automatically that night, not knowing what you were doing, this number on Exhibit G-10, Max Harley's telephone number?

A. My handwriting is generally in a heavier handwriting, I believe, than that.

Q. But if you were nervous and upset, could you have been doing things that you can't account for now?

A. To the best of my knowledge I don't remember that number. I don't know anything about the number.

Q. I see. Well now, you say you weren't talking that night about some invoices from Paster?

A. No.

Q. You are sure of that?

A. I don't think so.

Q. What if Stauble says you were?

A. I can't help what Mr. Stauble says.

Q. Now, as a matter of fact you were looking for some invoices, weren't you, thru the mail?

A. No.

Q. Well, what was the letter that your sister Ann was forwarding you the papers in, that you had Stauble call her up about and tell her that if she hadn't sent it to tear it up and flush it down the commode? What was that?

A. I never made that statement to Stauble. I explained the condition of my family up there and in regards, if I was to be arrested or anything, I tried to prepare my family over there for a shock, if it should happen, and it may have been that in the after talk I asked her did she mail me a letter, which is in regards to my personal affairs. It was not invoices.

Q. Well now, when did you advise Stauble to do that? To call your sister Ann?

A. Sometime during the night.

Q. What night? The night of the 9th? The night before you were arrested?

A. Could have been either the morning before I was arrested or the night before I was arrested sometime.

Q. You were arrested on the 10th as I recall it, which was Tuesday, wasn't it?

A. Yes, sir.

Q. Well, it was the Monday night before the 10th, the night of the 9th?

A. Well, it could have been after midnight.

Q. That's what I mean.

A. Could have been Tuesday morning.

Q. Yes, sir. It was that night when you were all up there in the Macon Hotel, wasn't it? You and Stauble?

A. Well, there was other people over there.

Q. I understand.

A. But I was—O. K., sir.

Q. That was the night that you slept on Stauble's bed. I asked you a little bit earlier what all you asked Stauble to do for you that night and you said you didn't ask him to do anything, didn't you?

A. I gathered from your information that I asked Stauble to call my sister, yes; to call any other number, no.

Q. Now tell us how it happened that you asked Mr. Stauble to call your sister over there? You and Satuble were in the room alone, I believe you said, two or three o'clock in the morning. Just what did you tell him to do?

A. The only thing that I remember of telling Stauble was that I probably may be arrested, and as an afterthought I must have mentioned the letter because it became an issue.

Q. Well tell us about that conversation. Where were you when you talked to Stauble?

A. I evidently was up at the Macon Hotel, and I don't know just exactly where I was at the time when I mentioned it to him.

Q. You told him to call your sister Ann in Ambridge, Pennsylvania. Is that correct?

A. Yes.

Q. Where did you tell him to call her from.

A. From a pay booth, I guess.

Q. Sir?

A. Telephone booth.

Q. Why not from the hotel?

A. Well, the hotel has a telephone booth.

Q. Why didn't you charge it to your room?

A. Where? At the Central Hotel?

Q. Yes, sir, your place of business.

A. I don't see what I done wrong. I gave the man the money to make the phone call.

Q. He was to call your sister and tell her to be prepared, that you might get arrested. And then what did you tell him about the letter?

A. I just asked her if she mailed me a letter.

Q. If she mailed you a letter?

A. Yes, sir.

Q. All right, sir. You didn't tell Mr. Stauble to tell your sister that if she hadn't mailed it to tear it up and flush it down the commode, did you?

A. No, sir.

Q. Why would he say you did?

A. I wouldn't know, because a person that you would call up and say that, if they mailed me a letter, ask them a question and then come back with a statement like that—I never remember making a statement like that.

Q. You can't account for that?

A. I didn't make no statement like that. All I asked was if the letter was mailed.

Q. Did you give Mr. Stauble the key to your post office box at that time?

A. To my post office box at that time?

Q. Yes, sir?

A. I don't think so.

Q. What if he says you did?

A. Beg pardon?

Q. What if he says you did? Is he just in error?

A. I wouldn't know. I'm trying to give you honest answers.

Q. Yes, sir.

A. And I don't think that I gave Mr. Stauble the key to the box.

Q. Wouldn't you know?

A. No, because I have the post office boxes, I carry two sets of keys and each set of keys may have ten or fifteen keys on it, and that was in the evening and I question whether I had any keys with me at that time myself. I don't know.

Q. Well, if you wanted Mr. Stauble to pick that letter up if it came to the post office box, if you wanted that you would remember if you had given him the key, wouldn't you?

A. The letter, to the best of my knowledge, wasn't coming to the post office box.

Q. Did you know that at that time?

A. I think I addressed a letter to myself and I think I—

Q. Oh, you addressed a letter?

A. To the Central Hotel.

Q. Now where were you when you addressed the letter to yourself?

A. Visiting my sister.

Q. What was this letter that you wrote yourself?

A. Pertaining to my own personal affairs as far as the will is concerned.

Q. We are not just idly curious about your personal affairs, but we would like to know what the letter was. What was it?

A. It was in regards to making up a will.

Q. What did it say?

A. It would—at that time when I wrote the letter, when I visited up there I asked her for a piece of paper. I made some notations on there. I put it into the envelope, addressed it and that was the last. Exactly, I do not remember.

Q. Well, why were you writing to yourself?

A. So it's one of these things that you keep forgetting and keep forgetting. When I saw the health condition of them up there I thought I'd better do something in regards to the will.

Q. So you decided you would write yourself a letter?

A. Yes, sir.

Q. Well, the letter was to remind you of something, was it? To make a will. Why were you worrying about the letter getting here when you knew what was in it already?

A. I wasn't much worried because when I left there I told her "when you get around to this throw it in the post office." There wasn't no stamps handy. I gathered the thing never came around and as an afterthought I asked him to see if she mailed it.

Q. What difference did it make whether she had mailed it or not? You remembered what was in it, didn't you?

A. Beg pardon?

Q. What difference did it make to you whether she mailed it or not? You knew what was in it and you had written it. Why were you so anxious to get it down here?

A. It may have been some things that I wouldn't want my family to know.

Q. That you were writing to yourself?

A. It was points, a couple of items that I put in there that I wanted to put into a will, sir.

Q. Well, why did you think the family would know about it?

A. It's just one of them things.

Q. Didn't that letter have invoices in it?

A. No, sir, not to the best of my knowledge, there couldn't have been.

Q. Didn't it have memorandums from Mr. Harry Paster of the records of—

A. Beg pardon?

Q. Didn't it have memorandums from your friend Harry Paster directed over to your sister for safe conveyance? (No reply.) What happened to that letter?

A. I don't know. I haven't seen it.

Q. It came in here, didn't it?

A. The best story I have got out of that letter was, Mrs. Turner received the letter. She was on the way to the hair dresser and the letter was either mislaid or lost or something of that sort. That's all I know of the letter.

Q. Now when Stauble called your sister, your sister told him "It's already been mailed", didn't she? He came back and told you what she said, didn't he?

A. Yes, sir.

Q. That's what she said, wasn't it? That the letter had already been mailed?

A. Yes, sir.

Q. To you at the Central Hotel, didn't she?

A. That the letter was mailed to me at the Central Hotel?

Q. Yes, sir.

A. Probably so.

Q. And then the next morning you were very much relieved when Mrs. Turner told you the letter had come in and she had destroyed it, weren't you?

A. I didn't talk with Mrs. Turner until late in the afternoon of that Tuesday. I didn't know nothing about when Mrs. Turner received the letter or anything, sir.

Q. Well, when was it she told you that? Late in the afternoon instead of in the morning?

A. She never told me she destroyed the letter.

Q. Oh, she never did tell you that at all?

A. She said some letter came in and she lost the letter. She verified the statement to Mr. Powell.

Q. Now what else did you ask Mr. Stauble to do for you that night, when you were all upset?

A. There isn't anything that I would know that I would have had to ask Mr. Stauble to do. I may have asked him to make—I admit asking him to make the telephone call, but nothing else that I know of.

Q. You admit you asked him to call your sister, but you deny that you told him anything about the letter except just in a general kind of a way. And do you admit or deny that you gave him the key to the post office box?

A. I don't think I gave him a key to the box, and I don't think I had the keys with me that night because they were bulky and it was in the evening. I wasn't in my working clothes, and I don't think I had the keys to the safety deposit box myself.

Q. The post office box, not the safety deposit box. You didn't give him a key to the safety deposit box, did you?

A. I was under the impression when you mentioned some kind of a key that you were referring to the post office box. At no time have I ever said anything about a safety deposit box. I don't know nothing about it.

Q. I see.

A. If I gave you an incorrect answer I apologize.

Q. I see. Now the next day didn't you tell Stauble that he need not worry about the letter any more, that it had been destroyed?

A. I don't remember having very much discussion with Mr. Stauble.

Q. Just answer my question, Mr. Tomley. If you didn't do it, just say "I didn't do it".

A. No, sir, I did not.

Q. Now that night when you and Mr. Stauble were up in the room, didn't you ask him also to call a couple of numbers in Detroit?

A. No, sir.

Q. Sir?

A. Not that I know of, no, sir.

Q. Whose number in Detroit is TO-93403?

A. That's Mr. Paster's business phone.

Q. That's his business phone. And Temple 15217 is where you can get thru to him thru Mr. Harley in case his business phone doesn't answer, isn't it?

A. I don't know. I don't remember.

Q. Sir?

A. I don't remember that number.

Q. You don't remember it. Now that night, didn't you ask Mr. Stauble to make a couple of calls for you up to Detroit, or you don't remember that?

A. I don't remember asking him to make any telephone calls outside of my sister.

Q. Now I'll ask you, sir, if Mr. Stauble is telling a falsehood.

Mr. Evans:

Let me identify this as Govt. Ex. 11 first.

Q. I'll hand you Govt. Ex. No. 11 and ask you if that's Mr Stauble's handwriting?

A. I don't know.

Q. Did you ever see Mr. Stauble take that number down when you dictated it? (Ex. 11: 93403—T. O.)

A. I don't think so.

Q. Mr. Stauble ever do any business with Mr. Paster?

A. I can't account for Mr. Stauble's actions.

Q. You don't break bread with him, I believe you said. You don't break bread with Mr. Stauble?

A. No, sir.

Q. He was a warehouse employee out there for a couple of months?

A. One of the other fellows that worked over there, sir.

Q. Pardon me?

A. One of the men that worked there.

Q. He was one of the men that worked there in your warehouse?

A. Yes, sir.

Q. As a matter of fact when we first started talking about him you scarcely remembered him?

A. No. No, I never denied knowing Mr. Stauble.

Q. You weren't sure. You thought maybe he might have worked at your place?

A. We were trying to specify the time limit. I never denied that the man did not work there.

Q. Yes, sir. Now I want to ask you did you tell Mr. Stauble, give him the money to do it, and tell him to go to a pay telephone and call Detroit and when one of these numbers answered to just tell them this: "They have got Joe surrounded. You had better be careful."

A. I don't think so.

Q. You never did tell Mr. Stauble to go call in that little short message?

A. No.

Q. And you didn't give him the money to telephone Detroit?

A. On the money proposition, I also gave—I gave that boy money to eat on, all the time.

Q. Well, let's stay on what we are talking about now. I know he was in bad shape. You got him out of the jail, didn't you? You got Stauble out of jail?

A. Once before that, yes, sir.

Q. Yeah. He was in bad shape, wasn't he?

A. Yes, sir.

Q. But that has nothing to do with what you told him, so let's stay right on what we are talking about. You gave him the money. How much money did you give him to make telephone calls?

A. I don't know. Wasn't no enormous amount of money. I couldn't remember if I gave him two dollars to make a telephone call, or whether I gave him three dollars altogether. I don't remember.

Q. Didn't make any difference how much money you gave him?

A. Yes, it would make a difference. If I gave the boy two or three dollars to call up my sister. I don't

deny that, but I will deny giving him money to call up any other numbers.

Q. You deny that you wrote either one of these numbers down?

A. Yes, sir.

Q. You deny that you gave them to him that night?

A. That I gave him money to call—

Q. Gave him these numbers, either one of them, told him those numbers?

A. I don't remember giving him them numbers, sir.

Q. You deny that you told him that you wanted him to call these calls thru first, even before he called your sister?

A. I deny asking him to make the calls there.

Q. I see. Do you or do you not know whether Stauble actually got the call thru to Harry Paster?

A. I'm not answerable for Mr. Stauble. I don't know anything about these numbers, me ever giving them to him to make a telephone call.

Q. What did he tell you about calling up Paster's place up there? Did he tell you anything about it?

A. If I never asked him to make the call there was nothing for him to report to me.

Q. I see. You know whether or not he made the call? (No reply) I assume your answer will be no. If it is just say no.

A. I didn't ask him to make no calls over there.

Q. I see. Now then you also asked him to call Mr. Jessup, didn't you?

A. That was a local telephone call, yes, sir.

Q. There are several things you asked Mr. Stauble to do for you that night, since we have gone over it a little, aren't there, Mr. Tomley. Several things you asked him to do for you.

A. Mr. Clot may have called Mr. Jessup up. I don't remember if I asked him to call a local call.

Q. Well, I thought you just said that he called Mr. Jessup up for you?

A. He may have. That I do not deny.

Q. Well, what did you mean when we first started talking about Mr. Stauble, that you didn't ask him to do anything for you that night? Looks like he did a great deal for you. What did you mean when you said that you didn't ask him to do much for you, anything for you?

* * * * * * * *

Q. Well, let me ask you if you remember whether or not Mr. Stauble went by the Central Hotel for you to see if the FBI was at the Central Hotel? Did you ask him to do that?

A. No, sir.

Q. I'll ask you if you asked him to go by the Greyhound Bus Station to see if Mrs. Turner was there or if she had been arrested?

A. No, sir.

Q. So if he says that, he's just dreaming stuff? If he says that he's in error?

A. I didn't ask him to do it.

Q. Maybe this will help refresh your memory. Do you remember Mr. Stauble having gone to the post office with the key and gotten you a letter and he brought it up to the room in the hotel and started to talking and you pointed all around the ceiling up there, indicating that the wires were in there and the room was tapped and he had better not say anything?

A. You mean that Monday or Tuesday? Is that what you mean?

Q. Yes, sir, right around that time.

A. Mr. Powell, I believe, can answer for any of my actions Tuesday.

Q. Do you remember anything like that?

A. I don't remember Stauble coming up to my room, no, sir.

Q. You don't remember hushing him about talking, that the room might be tapped?

A. No, sir.

Q. You don't remember him bringing you a letter?

A. No, sir.

Q. That had a $50 bill in it?

A. No, sir.

Q. Now, what got you so upset about the FBI being after you?

A. The procedure that was followed. I tried to cooperate. I tried to answer all of the questions that they asked me on two previous occasions. And that boy calling in there, which has never happened before, and that's all. I got excited. I didn't know nothing. When I came back to the hotel, whatever time it was, and saw them with Mrs. Turner, coming off the elevator, I wondered what it was. I went back over to the Central Hotel, or down to talk to Mr. Clot and sat there talking. I didn't know what was in the wind because the last time Mr. Powell was talking to me he told me that if we talk to you again you should bring counsel with you, or something like that.

Q. Well, now, let me see. You had just been on this trip up there to see Mr. Paster and other people in Detroit over to see your family in Pennsylvania and back, and you got back about the 25th of April and you got upset on the night of the 9th of May, as I take it. That was on a Monday night?

A. Yes.

Q. And the thing that brought on that upset was that you saw the FBI talking to Mrs. Turner. Is that correct?

A. Yes.

Q. And that was down in the Central Hotel. Now tell us who Mrs. Turner is?

A. She's the official secretary of C. T. Sales. She's not on a salary, and she's my dinner companion.

Q. I see. And you all have rooms that join there in the Central Hotel, don't you?

A. Yes, sir. She has Room 231 and I have Room 233.

Q. I believe you said there's two doors, like a lot of old hotels, that open between those rooms?

A. Yes.

Q. Now how long have you all, each of you, been living in the Central Hotel?

A. I checked into the Central Hotel around March of 1954.

Q. In other words you came in February and you went into the hotel in March. Was she living in the hotel at that time?

A. I think she was living there prior to that time.

Q. Now when you were out of your room she customarily answered your telephone, didn't she?

A. Not customarily, no. Just whenever I would ask her, because she had a phone in her room and I would have a phone in my room, and every now and then, which would happen very seldom, I would tell the desk if so and so would call me up—nothing important, I believe,—I don't think I have asked Mrs. Turner to accept five telephone calls for me for all of the length of time that I was there.

Q. I see. Well, now you were saying something about Andrew Jackson Wright, this man that testified against you, something about him harassing you with telephone calls. Tell us about that again, sir.

A. Could I have that question again?

Q. You said something about Andrew Jackson Wright, the man that said that you put him up to stealing some of this stuff, and he delivered it to you, you said that he got to harassing you and worrying you with a bunch of telephone calls. What was that? I didn't quite get it.

A. I don't remember making a statement like that.

Q. Well, did he call you over the telephone?

A. A few times.

Q. When?

A. Oh, I don't know. You mean the time of day, sir? In the evening would be the only time that I ever was at the hotel. I may have received two or three telephone calls from the man.

Q. Well, what about the night of the 9th? Wasn't that one of the things that upset you? He was calling you and wanting to come down there. That's what I understood you to say, that that was one of the things that upset you?

A. The man at the desk—I came into the hotel, he said "There's a fellow by the name of Wright phoning you. He has motors for you." I said, "The man never phoned me and offered me merchandise why tonight?" The second time I think I said that happened, that that call came in, that he wanted to see me, I told the man at the desk that I did not want to see the man.

Q. That was on the night of the 9th? That was on Monday night, wasn't it?

A. Yes.

Q. He hadn't been calling you before then, had he?

A. I ran that man off in March. I told him I don't want to see him, I don't want to talk with him, I don't want to have nothing to do with him, sometime in March.

Q. Yes, sir. And that was on Monday night, the 9th of May, the night of the 9th. Now what time was it you came in there and the desk told you that. You said somebody on the desk told you that?

A. Yes, sir.

Q. What time was it?

A. It was right after we had lunch, or dinner rather, and I couldn't tell you exactly what time. It wasn't—I couldn't exactly tell you what time.

Q. Well, that was the thing that started all of your fearfulness, wasn't it? Or were you already scared when the man at the desk told you that?

A. I wasn't scared. I just—at the time there I didn't want to talk to the man and I forgot all about it. As far as that telephone call coming in that didn't bother me. I just didn't want to talk with the man. I ran the man off in March.

Q. I see. Well, now when did you first get scared? You said you first got scared when you saw the FBI with Mrs. Turner. Is that right?

A. Yes, sir.

Q. Now what time was that?

A. That must have been around ten o'clock.

Q. And what time was it now—had you had dinner with Mrs. Turner that evening?

A. We had dinner at the normal time, around seven o'clock I believe, somewhere around there.

Q. And was it after seven o'clock that Wright called you?

A. I don't know what time he called the hotel. I wasn't there. I'm repeating what the desk clerk told me.

Q. You didn't go by the hotel before you had dinner?

A. I came and got dressed, got washed up and changed clothes and went out to dinner.

Q. Well, don't they leave word that somebody is calling you if they have been calling you?

A. I don't know anything in reference to it. The first I heard of it was when I came back from lunch, from dinner.

Q. When you came back from dinner?

A. Yes, sir.

Q. And that must have been about what time?

A. Must have been after seven.

Q. I see. Now who was it that told you about that?

A. The man at the desk.

Q. Who?

A. Whatever his name is, I don't know.

Q. What's his name?

A. I don't know. He works at the Central Hotel.

Q. Is he still there?

A. I believe he is.

Q. Now tell me exactly what he told you.

A. He said, "Some man by the name of Wright, to the best of my knowledged, is phoning you. He wants to see you. He has motors for you." Some words to that effect. That may not be the exact words, but just what the man told me. I told him, "I don't want to see the guy. I don't want to talk to him", or words to that effect, and we went out of the hotel.

Q. Did he say, "The man wants to sell you some motors"?

A. I'm pretty sure he did.

Q. Were you looking for a call from Wright?

A. No, sir.

Q. Well, when was it that you gave Mrs. Turner the instructions that if Mr. Wright called to tell him that you didn't want to talk to him?

A. Could have been later after that. It would have to be after that, because I think there were three or four of us went out to dinner and she was one of the group. It had to be later. Could have been around eight, eight thirty, because I believe Mrs. Turner decided—she said that she would go and lay down, she was going on duty at eleven thirty or eleven fifteen, she was going to work, and I said to the desk, I said, "If I get a call let Turner take it", or words to that effect, because I didn't want to get it, because the man at the desk had told me that this man is going to keep calling. I think he said he called twice.

Q. Well, at that time Mrs. Turner hadn't talked to him, had she?

A. I don't think so, no.

Q. When you told her not to tell him anything, that you weren't interested in talking to him, she hadn't already talked to him? That must have been along about eight o'clock or something like that that night?

A. Could have been eight or nine o'clock. I don't remember. I told her to tell the boy, if he calls in to take the call and tell him I don't want to talk with him, or anything.

Q. Well, at that time did Mrs. Turner tell you that she had talked to him at 6:14 that evening over the telephone?

A. No, sir.

Q. Did she?

A. No, sir.

Q. She hadn't talked to him at all?

A. No, not—she didn't tell me that she had talked to him, no.

Q. Now when she did talk to him—did you instruct her that when she did talk to him that she was to tell Wright to take the stuff he had and bury it and that you would contact him later?

A. No, sir.

Q. Well, what if she told Wright that over the telephone? That was outside of your instructions to her?

A. That could have been her way. All I told Mrs. Turner was to tell him I don't want to see the boy.

Q. Well, it could have been her way? What would she mean by "take the stuff and bury it"?

A. I don't know. It may have been her way of putting it, but I don't know.

Q. Sir?

A. I don't know.

Q. Do you or do you not know whether the FBI was in on that telephone call, listening to Mr. Wright make it?

A. At that time I knew nothing of it until afterwards. Mrs. Turner told me what I repeated once before, that Mr. Powell told her that he was making that telephone call.

Q. Wright was doing the talking and that he was on an extension telephone. That's right, isn't it? That's what Mrs. Turner told you?

A. I believe Mrs. Turner told me that when Mr. Powell came over there to ask to come into her room, he said to her why did she accept the telephone call, or words to that effect, and said "You know who you

were talking to? You were talking to me". That's about as close as I can put it.

Q. Did she tell you that she told Wright, with Mr. Powell listening on the extension, to take the stuff he had and bury it, and that you would contact him later?

A. That wasn't my instructions to her. All I asked her to do was to tell the boy I do not want to see him.

Q. I see. And if she said that then she wasn't carrying out your instructions? She was using her own ingenuity?

A. I can't account for what Mrs. Turner would say.

Q. And then at ten o'clock when you saw the FBI talking to her is when you really got upset?

A. Yes.

Q. Why did you get upset?

A. For the simple reason that I didn't know what was going on.

Q. Now Wright called you a good number of times, didn't he?

A. No.

Q. What about on January 19, 1955? I'll just ask you a few of these dates. January 19, 1955 at 5:57 in the evening; January 22, at 8:20; February 1, 1955, 5:48 in the evening; February 16, 1955 at 6:09 in the evening; January 15, 1955 at 6:01 in the evening; January 27 at 5:55 in the evening; February 8 at 6:01 in the evening. I've named over there some seven calls. I wonder if those could be correct?

A. I don't remember the man phoning me over two or three times.

Q. Tell us about the time that you found the platinum stuff out there and reported it to Mr. Galbraith.

You heard Mr. Galbraith testify.

A. That particular time there was an invitation up for sale was offered all over the country. I went over there, looked at the box, saw the plugs over there I came over to ask Mr. Galbraith, I said, "These things going up for sale"? After about a week or so after that—no, I would say a couple of days after that, the Base canceled that sale in its entirety I would say that it was around May. I think the Field can answer to that, because they canceled the sale that they had advertised all over the country. I would say I saw at least a hundred thousand platinum pointed plugs laying in the warehouse after they were segregating that pile, if I ain't mistaken. I have gone to Mr. Scruggs and asked him about a pallet of spark plugs that was laying with packing that I had bought on the inside. I made a joke out of it. Came over to Mr. Scruggs, I said, "This pallet is in this line. Does that go with this particular lot?" Which may have been two or three thousand pounds of it. It was on numerous occasions, you inquire about what is for sale, and if the thing is not described on something you ask, and the closest man to you you ask, and—

Q. Well, let me ask you, did you ever buy any platinum pointed plugs out there, new ones, boxed up, buy them as platinum pointed plugs?

A. They never advertised it as platinum pointed plugs. They'll advertise it as an assortment of plugs, and I have bought that. I have bought last May, where I bought assorted plugs. I think they claimed there was 80,000 in the lot and I believe that we got closer to 125,000. You bought it as a lot.

Q. During this period of time though you never did buy platinum pointed spark plugs out there as such?

A. They would not advertise and say platinum pointed spark plugs, but if you bought materiel it was very easy for it to be in the materiel. I question Mr. Scruggs' statement that it's always under lock and key.

Q. I see. I'll ask you, sir, what this is?

A. That's a 281.

Q. Platinum pointed new spark plug, aircraft?

A. Yes, sir.

Q. This is Govt. Ex. No. 12. These weigh about four ounces each, don't they?

A. I don't know. Somewhere around that.

Q. Did you ever buy any platinum pointed spark plugs like this one?

A. The one that I had, the 281?

Q. Yes, sir.

A. Not that I know of.

Q. Or the 181?

A. Yes.

Q. Did you ever buy them described as new platinum pointed spark plugs?

A. Described as new platinum pointed spark plugs? No.

Q. The only way you ever bought them would be when you would buy a lot of stuff out there on a spot bid that was supposed to be old discarded, non-platinum spark plugs, and then find some platinum ones in there? Isn't that true?

A. Yes.

Q. Now during the one month beginning January 27, 1955, from then until February 25, 1955, in that less than a month period, I believe you have admitted selling over 500 pounds of platinum tipped spark plugs?

A. I have admitted selling whatever is on the invoices, whatever the figure is, yes, on the invoices.

Q. And I believe as respects that that your defense is that you picked out those two thousand odd spark plugs from among the non-platinum tipped that you bought, the salvage.

A. I said that I have got some from my warehouse in Cleveland. I have got some from Mr. Strickland, and I have got some from lots that were mixed up in merchandise off the Field.

Q. I show you your Exhibit No. 32, Deft. Ex. 32, which is an invoice from Quality Supply Company whereby you bought from them 485 BG 5/3 Spark Plugs on February 23, 1955. I believe you offered that in evidence to account for some of the spark plugs that you had been charged with under the Government's indictment?

A. No.

Q. Well, what did you introduce it for then?

A. That I have sold these spark plugs that I have bought from somebody else.

Q. Well, wait a minute. If you didn't introduce this invoice for these 485 spark plugs to show that that's where some of these that you are charged with selling came from, then what did you introduce it for?

A. To show that other people that want spark plugs come out there very often. People, various surplus dealers, get spark plugs.

Q. Well, that wasn't to account for the ones that you sold in here but just to show that they could be bought in the market?

A. To show that they came off of the field or that they could be bought.

Q. Now was this the only invoice that you introduced showing where you had bought platinum pointed spark plugs, as such?

A. I believe that I have bought some from Mr. Strickland.

Q. But you didn't introduce an invoice? Just his testimony on that, the Reverend Mr. Strickland?

A. You do a lot of trading in this materiel, in surplus. We trade among ourselves quite often.

Q. You and Harry Paster trade that way?

A. No.

Q. You all always use papers when you trade?

A. This is local affairs.

Q. I see. You and Mr. Bilderback trade that way?

A. You are paid by check.

Q. What happened to these plugs here?

A. They were sold to Detroit.

Q. Sold to Detroit?

A. Yes, sir.

Q. Well, now you are not charged with the sale of these in the indictment, are you?

A. No, sir.

Q. They were sold to Shelly & Company, weren't they?

A. Yes, sir.

Q. Paid for by check?

A. Yes, sir.

Q. And Shelly & Company's records show that sale and yours show it, don't they?

A. Yes, sir.

Q. Now you didn't bring this invoice in here to have this jury understand that this was where part of those spark plugs came from that you sold?

A. I did not. I didn't come to misrepresent that at all.

Q. That was just an illustration of the fact that they could be bought? Is that it?

A. In all of the papers or anywhere, there's always platinum pointed spark plugs offered for sale.

Q. What's all this stuff in here that you have brought in here that we took up two and a half days with? Is that illustration stuff too?

A. That I bought from the Base, yes.

Q. Doesn't have anything to do with your defense as to this stuff that you sold as charged in the indictment, except just to illustrate that stuff like that sold out there? Is that right?

A. Well, to show that I had merchandise. There's one point originally, I was arrested for a motor gun charger, which is a Class 11 E. I in turn have about 3000 motors of the same type that has been sold on that Field by the pound in electronic residue. I bought them by the piece, by the pound, and I have a large quantity of them. I didn't put no significance on that motor at all.

Q. All these invoices that you brought in here, did you point out on any of them about those springs there, those points, Govt. Ex. No. 8? Does that have anything to do with them?

A. When you send a 30 foot trailer to a field and they bring in merchandise and they might be hauling for three or four days, they keep piling the merchandise into the warehouse, you never can take any particular item and point out a place and say "I got it here, or there."

Q. Mr. Tomley, did Mr. Wright ever visit you all up in the hotel?

A. He may have visited me once or twice.

Q. What was he doing up there?

A. He stopped in.

Q. What for? This is a man that accused you of putting him up to stealing, now, that we are talking about. What did he drop by there for?

A. The man may have phoned me, mentioned some number to me, I told the man to write it down and bring it to me. He may have stopped there five or ten minutes.

Q. You wrote that on there, didn't you, your phone number on there, on your card? Look at that and see if that's your handwriting.

A. That could be my handwriting.

Q. Yes, sir.

A. Yes, sir.

Q. Did you write any numbers down of these things that were good platinum that Harry Paster was interested in?

A. I wouldn't remember one way or the other.

Q. You wouldn't remember if you wrote down for a Govt. employee items that you were interested in? You wouldn't remember whether you wrote them down or not?

A. If I had my desk in my room which had a lot of numbers and somebody would pick up a piece of paper with something that I had written down, I wouldn't say that I gave it to them.

Q. You specialize in numbers, sir, don't you?

A. Yes, sir.

(Govt. Ex. No. 13 identified; letter to Tomley from C. M. Cachat. Recess 11:00—11:15)

Q. How many times in all do you suppose Mr. Wright came to your room, or Mrs. Turner's room?

A. Mrs. Turner's room?

Q. Yes, sir. To you all's rooms?

A. I had my separate room. Mrs. Turner had her own room. I don't think Mr. Wright was ever in Mrs.

Turner's room. He may have been a couple of times in my room.

Q. When was the last time he was in your room before the FBI apprehended you?

A. I wouldn't exactly know.

Q. Was it a few days or a few weeks or a few months?

A. I couldn't—I didn't see Mr. Wright myself for a month and a half or so before I was arrested.

Q. I have here Govt. Ex. No. 13 that was taken from Mrs. Turner's room in the Central Hotel on May 10, 1955. It's a letter addressed to you dated about a year before, and on the back of it in writing, "A. J. Wright, 371 C N. Zeigler, Warner Robins". Looks like "Warren Robbis", "371 C". Would you be able to give us any light on that, how that happened to be there?

A. I send out Christmas presents, Christmas cards and she addressed the cards out for me, and that could have been the address that I gave her.

Q. Is that your handwriting?

A. This "A. J. Wright" seems to be my handwriting. The "371 C N Zeigler" seems not to be. This "Warren Robbis", I'll question that. The 371 figure would be—

Q. You didn't give this to Mrs. Turner for any reason other than to send out Christmas cards?

A. Yes, sir, send out Christmas cards. She had the mailing list for the Christmas cards, and that's the only reason.

Q. You gave all kinds of presents out there to employees besides Christmas cards, didn't you?

A. I send out—my way of saying Merry Christmas, I send out a pencil and a neck tie. The girls I send out a handkerchief or something. Mr. Workman

reprimanded me for it, which I didn't know that there was anything wrong in it.

Q. You said that they always had those laborers there on the yard to load your trucks when you went out there. I'll ask you, one of those laborers is named Took, isn't it, Tuck, or what is his name?

A. Tooks.

Q. You know such a fellow?

A. He's a checker. You mean a colored fellow that's a checker?

Q. Yeah.

A. Yes, sir.

Q. What all kind of presents have you given him?

A. The same thing that I gave any other employees there, or the girls in the office. I didn't make no distinction.

Q. You ever give Tooks any money?

A. No, sir.

Q. Never?

A. No.

Q. Never gave him a $5.00 bill?

A. No, sir.

Q. Well, this fellow whose name is here, Wright, did you ever give him any money?

A. Might have given him a couple of dollars.

Q. He's an employee out there?

A. He wasn't connected in the salvage yard. I never had nothing to do with the man directly on the field in loading my truck.

Q. He was in the step right above that, in the 27 yard?

A. All that man done to the best of my knowledge was to bring the merchandise to the salvage yard and left it.

Q. Could he have transferred some on 27 for you?

A. I couldn't see how, no.

Q. Wasn't any way to just take any of this stuff and put it on the wrong stack?

A. No, sir.

Re-Direct.

By Mr. Miller:

Q. Mr. Tomley, I show you a paper here that is identified as Deft. Ex. No. 36-D and ask you what that is?

A. That's a circular that I sent out on the 25th of Feb., 1955.

Q. Did you send it out to various and sundry surplus dealers, or just one?

A. I sent it out to maybe ten or fifteen various dealers.

Q. That seems to include various items, but does it also include a motor gun charger as we have involved in this case?

A. Yes, sir.

Q. How many in that circular are you offering for sale?

A. Thirty six.

Q. Are you offering also 60 of another type electric motors?

A. Yes, sir.

Q. Now Exhibit 36-C, I'll show you. Is that a letter you received from H. Z. Rosenberg & Co., in answer to that circular?

A. Yes, sir, March 3, 1955.

Q. Were they showing interest in the motors?

A. "Thank you for your February 25 letter offering Class 11E items. As you well know, 11 E is a rather

dead item at the present time but we would like to know what your very lowest price is for the 60 Delco motors and the 36 T.O.C. Motors. Make the price real cheap otherwise we can't even be interested in it. We await your reply. Very truly yours, H. Z. Rosenberg & Co"

Q. Made reference to the 36 T.O.C., are they the type motors we have involved in this suit?

A. Yes, sir.

Q. Deft. Ex. 36-B, is that your answer to them?

A. "March 7, 1955. H. Z. Rosenberg & Co, 781 Seneca Street, Buffalo 10, New York. Gentlemen: In regard to your letter of March 3rd in reference to our price on Class 11E items. The lowest price we can give you on the 60 Delco motors and the 36 T.O.C. motors is $200.00 for the lot".

Q. And 36-A, is that a copy of your invoice where you shipped them the 60 Delco motors and the 36 T.O.C. motors, the kind involved in this suit?

A. Yes, sir.

Q. Now I'll show you Deft. Ex. No 37 Does that represent the sale of the 485 platinum pointed spark plugs that Mr. Evans was talking about a moment ago?

A. Yes, sir.

Q. That came from Mr. Herndon, I believe?

A. Yes, sir.

Q. Mr. Tomley, what is Mrs. Turner's regular job?

A. She's an employee of the Greyhound Bus Depot.

Q. In what capacity is she employed?

A. Ticket seller, baggage master.

Q. Mr. Tomley, have you ever been convicted of any crime?

A. No, sir

Q. Have you ever been indicted for any offense before this?

A. No, sir.

Q. Have you ever been arrested before in your life?

A. No, sir.

Q. How old are you?

A. Forty nine last March 4.

(Witness excused.)

MR. D. B. RITTS, being recalled in behalf of the Defendant, testified as follows:

Direct Examination.

By Mr Miller:

Q. Mr. Ritts, since you previously testified in this case the other day has there been some discussion with you, between Government counsel and yourself and between myself and you, concerning these 10-20236's that you got from Mr. Tomley, or one of your companies got from Mr. Tomley, as to whether or not any of that shipment contained any 10-20237's. Has there been any discussion with you since you were on the stand?

A. I think my testimony to that effect was that I was convinced that we had received 20236's. I later found that the—I presume it's the indictment, indicated 1000 each 20237 on our invoice M 116. I have since verified with the Amnor Aviation Corporation of Mamoroneck, New York, that we exchanged 1000 of 20236 for 1000 of the 20237.

Q. So can you now state positively—

A. The part we did receive was 20236.

Q. Sir?

A. The part we did receive from Mr. Tomley was 20236.

Q. All right, sir. Now, is the letter P the proper abbreviation for the metal platinum?

A. Well no, it's not. I think the dictionary will indicate that Pt. is the proper abbreviation for platinum.

Q. Does that necessarily mean also then that the letters p l a t are not the proper abbreviation for platinum?

A. Common sense would indicate that it would not be.

Q. I set before you again there just a moment Deft. Ex. No. 6, a box of breakers. Is there in that box a BK 5262?

A. Well, on the surface of the box I can not see a BK 5262, although there may be one.

Q. See if you can find one there without too much trouble.

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Q. Deft. Ex. 6, do you see any breakers in there, Mr. Ritts?

A. I see a lot of breakers.

Q. Or points or springs or whatever you call it that contain more platinum than a 10-20236, which I understand your previous testimony was that a 10-20236 contains .006 ounces.

A. That's correct, sir. I say that all of the points in the box far surpass the amount of platinum found in a single 20236.

Q. We've heard a lot about platinum pointed spark plugs. Will you step down here and show the jury just what there is about a spark plug that contains platinum. I don't believe anybody has done that. The whole thing is not platinum?

A. No, sir. The three electrodes, the two on the surface and the one in the center.

Q. The little poles here where the spark jumps from?

A. Yes, sir.

Q. And the middle pole to which the spark jumps from, or to, whichever it is.

A. There's approximately, I believe, eight grains in the plug, that is platinum in that plug.

Q. Thank you.

Cross Examination.

By Mr. Evans:

Q. Now, Mr. Ritts, as I understand it, the point you are attempting to clear up, the Government charged the defendant with having sold illegally 1000 of this item here, Govt. Ex. No. 4, and they also charged that the defendant sold you a thousand of a companion item to that?

A. No, sir. The item we received is this item here.

Q. And you are testifying that instead of receiving a thousand of this item 4 and a thousand of the companion item to it, that you received 2000 of the item 4 alone and none of the companion item?

A. No, sir, I have not said that, sir.

Q. Well, what did you say?

A. I say the item we received was the 20236.

Q. Is that this one?

A. Yes, sir.

Q. How many did you receive?

A. 3,986 pieces, I believe.

Q. 3,986?

A. Yes, sir.

Q. From Mr. Tomley?

A. From Mr. Tomley.

Q Is that the same transaction we have been talking about up to this time as being 2,000?

A. It's the same base that I have been talking about, yes, sir.

Q. Well, the Government has got him charged with only 1000 of those bases in the indictment. Isn't that true?

A. Beg pardon?

Q. The indictment charges him with only 1000 of these and you say he got how many?

A. We received 3,986 or 84 pieces.

Q. I'll ask you, sir, whether or not you recall an FBI agent by the name of James Roen (Rowen?) having called on you at your place of business in Rochester?

A. Yes. sir, I do.

Q. I'll ask you whether or not you exhibited to Mr. Rowen Aero Industries, Inc. invoice No. M 116 dated February 7, 1955?

A. No, sir. I think that was a Consolidated Aircraft Supply Company invoice to Fresno Air Motive for 1000 each of the 20237's and 1000 each of the 20236's.

Q. Yes. Did you indicate to him that that was the disposition of 2000—

A. Yes, sir, I did.

Q. Well now, what I'm trying to get at is, where does this confusion come up. How did it come about?

A. Well, the explanation is this, that the 20236 and 7 are not an extremely saleable item. That was our reason for trading 1000 of the 36 to Amnor Aviation, to receive 1000 of the 37 to consummate the sale.

Q. Well, they sell for the same thing, don't they?

A. The list value of the 7, and I think the Government acquisition of the 7, is slightly larger than the 6.

Q. But for practical purposes—

A. For practical purposes, I believe our invoice read 38c each, if I recall correctly. That's all our customer wished to buy. The balance of the sixes we, of course, what we call cannibalized and removed the platinum contents of the balance.

Q. And what you are testifying to now is that instead of having gotten just one thousand of these as the Government charges, you got 3900 of them?

A. I think my testimony revealed that we acknowledge a sale of 2000 of the 20—wait a minute, I'll rephrase that. We received the 20236 and we traded one thousand of the sixes for the sevens.

Q. That's what you all did?

A. Yes, sir.

Q. But your testimony here today, as I understand it, on this item here. Exhibit 4, that the Government has got charged that he shipped you a thousand of, your testimony is that he shipped you 3,900?

A. Well, I'm testifying that we received 3,984 or 86 pieces.

Q. In other words he really shipped you, of this item, three times as much as the Government has charged that he shipped you?

A. Well, I'm not too well acquainted with the charges, but the reason the invoice indicates 1000 of each, as I stated, the customer would only purchase that quantity. The balance we scrapped and we did

not find that scrap until this James J. Roen had left our office, and I think it's on a copy of the bill of lading attached to our check.

Q. Well, when the FBI agent left your office you would say that he was under the impression that it was a thousand?

A. Most specifically, and so was I.

Q. Both of you were?

A. Yes, sir.

Q. And after that you found out that this particular item, you got four thousand, or thirty nine hundred of each?

A. That's right. If I may see the bill of lading attached to the invoice I'll point out the exact quantity that we received.

Q. Yes, sir.

A. May I see it?

Q. Yes, sir, if it's here. Is this it?

A. Yes, sir. I would like to restipulate the quantity is 3928 pieces of 20236es.

Q. 3,928 instead of just 2,000?

A. Yes, sir.

Q. That makes nineteen hundred more that you all really got than all this testimony has been talking about?

A. That we got and paid for.

Q. Now, Mr. Tomley has told us that he got 2,000 of these from a dead man, Mr. Roberts. Did he ever tell you where he got the other $,900?

A. Mr. Tomley never told me where he got any of his materiel.

Q. I see. Now the dictionary abbreviation for platinum is "Pt."?

A. Yes.

Q. But there wouldn't be anything wrong in writing "platinum" on something if it was big enough would there?

A. I don't quite follow you.

Q. I say there wouldn't be anything specially wrong, if the Government was trying to keep folks from stealing their platinum, in writing the whole word "platinum" on something would there?

A. If they saw fit.

Q. Or they could write "Plat", because there's not many of those folks that deal in platinum out there, handling it, the day laborers, that know what Pt. stands for?

A. I would assume that to be true.

Q. So anything that might put them on notice of what platinum was, there wouldn't be anything wrong with the Government doing that?

A. I would never question what the Government does.

Q. And you just answered an academic question as to the "Pt."?

A. Yes, sir, I did.

Q. You don't have any interest in this?

A. No, sir. I was most amazed to find that "Pt." was the abbreviation.

Q. And if you saw something with "Plat" you would think it might be platinum?

A. I most assuredly would.

Q. Have you got you one of those glasses like Mr. Tomley has got?

A. I don't know whether it's like Mr. Tomley's. I keep one with me, a loop.

Q. What did you call it?

A. A loop. It's a jeweler's loop.

Q. And if you look on that thing there—have you got it with you, in your pocket?

A. I think this can be read without the glass if the light is bright. Well, no, this one I can not see. (Getting out his glass) I'm afraid that the American-Bosch spring has never been too well marked. It was not made by one of the leading four manufacturers in the point business.

Q. Yes, sir. You've seen these samples a number of times with these points on them?

A. Yes, sir.

Q. Most of them that contain platinum itself contains the manufacturer's marking that you can see under a glass?

A. Yes, sir.

Q. That's all.

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Re-Direct.

By Mr. Miller:

Q. Mr. Ritts, in your business that you have already testified about, do you buy electronics or air plane parts that contain platinum, which you sell for re-use as an item as you get it, and which you also handle for salvage for the platinum content?

A. Yes, sir.

Q. Have you bought that type of merchandise from army installations in various places all over the country?

A. I have purchased vast quantities of usable platinum points from the armed services.

Q. Have you ever been confronted before in any of your purchases with any contention that the pur-

chase of platinum materiel is contrary to Air Force regulations?

A. No, sir. That's what I'm trying to get clarified. That was my question.

Q. In other words, so far as your business in the United States of America is concerned, the only place that you have ever run into that is Macon, Bibb County, Georgia?

A. This is the first time that I have been called to testify concerning such materiel.

Q. Do you know of any regulation that prevents the sale of platinum?

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Q. Mr. Ritts, the 10-20236es that you got from Mr. Tomley, did you get them all in one shipment or more than one?

A. One shipment, sir.

(Witness excused.)

Mr. Miller:

I would like to inquire if all of the Government's documents, particularly No. 9, are in evidence?

Mr. Buford:

No, sir. We are going to offer it.

Mr. Miller:

All right. We wish to offer in evidence, if Your Honor please, the following exhibits: Exhibit No. 1—

Mr. Evans:

May it please Your Honor, we have no objections to any of the thirty some odd exhibits that have been offered by the defendant. We will let them all go in so far as we are concerned.

By the Court:

Very well, that will shorten it, won't it, Mr. Miller?

Mr. Miller:

Yes, sir, if I can find them all.

By the Court:

They are all admitted in evidence.

Mr. Miller:

We rest, Your Honor.

MR. JOSEPH TOMLEY, re-called by the Government, for further cross examination, testified as follows:

Cross Examination.

By Mr. Evans:

Q. Mr. Tomley, you just heard Mr. Ritts testimony that instead of getting 2,000 of this Exhibit No. 4 that you sent him thirty nine hundred and some odd?

A. Yes, sir.

Q. I show you Exhibit No. 29 and ask you if that 3,928 on there is the correct number of those that you sent him?

A. That's what he said.

Q. Is that right?

A. Yeah. I wouldn't know—er—

Q. You what?

A. I heard the gentleman say 3,928.

Q. Yes, sir. Now you got 2,000 of those from the dead man, didn't you?

A. Whatever I got from him! Yes.

Q. Where did you get the other 1,928?

A. In that shipment. I got them all together. They were all in one box.

Q. You mean you got the other nineteen hundred from the dead man too?

A. Must have been in the box because I sold that as a lot.

Q. What else did you ship in that shipment, in the same one? That was by air express, wasn't it, by Eastern Air Lines?

A. I don't remember. Whatever my invoice says, that's what it was.

Q. What else does it show you shipped?

A. Shows on here 10-20236 bases, total price $651.85.

Q. What else did you ship in there, in that same shipment by air express?

A. I don't know. I don't know of anything else, if there was anything else.

Q. Well, that's your record. That's photostat copies of your records that you brought in here to introduce. Look on them and tell me what else?

A. I brought in an invoice for $651.85.

Q. How many does your invoice say you shipped him?

A. Total price—

Q. What's the number count on your invoice?

A. I don't know. I got $651.85.

Q. What's the number count on it?

A. I couldn't understand. There's no number. The total price of the whole transaction is $651.85.

Q. That was for all thirty nine hundred?

A. Yes, sir.

Q. I thought the testimony up until Mr. Ritts took the stand a minute ago was that there were 2,000?

A. I checked with Mr. Ritts and I understood that it was 2,000, and that's all I went by; whatever the figure was, that's what it was.

Q. How much did that shipment weigh?

A. Says here 47 pounds.

Q. Well, now the man that went out there with you, Mr. Lenteni, said that box weighed 3 or 4 or 5 pounds?

A. I wouldn't know, sir.

Q. You heard him say that, didn't you? Mr. Lenteni?

A. I don't remember what the gentleman said.

Q. I believe that he said the box was 12 x 12 x 18, but you said 8 x 8 x 8?

A. Somewhere about that. That's my best recollection.

Q. And Mr. Lentini said the other box up there that he got these things, Govt. Ex. No. 1, out of was around 8 x 10.

A. I don't remember what he said.

Q. You are satisifed though that you shipped him 3,980 some odd of those and that they all came from Mr. Roberts?

A. Yes, sir.

Q. Did they come in that same transaction?

A. Yes, sir.

Q. The box that Mr. Lenteni is talking about, the three or four or five pound box?

A. I don't know what box Mr. Lenteni is talking about. I tried to explain to the best of my knowledge what size box it was, and that it was one transaction.

Q. You remember him talking though about the 3 or 4 or 5 pound box with the 2,000 in it. You remember that, don't you? You were sitting there, weren't you?

A. I was sitting there, sir.

(Witness excused.)

MR. JAMES STAUBLE, being called by the Government, testified as follows:

Direct Examination.

By Mr. Evans:

Q. Are you Mr. James Stauble?

A. Yes, sir. J. T. is my real name.

Q. Mr. Stauble, I'll ask you, sir, whether or not you live down here or in New York, or where?

A I live in New York City now.

Q. Who do you work with now?

A. Salvation Army.

Q. How long have you been with them?

A. Just about a year, sir, not quite a year. I'll say about 11 months to be exact.

Q. Are you in their traffic department?

A. Yes, sir.

Q. Delivering and picking up merchandise for them?

A. Yes, sir.

Q. I'll ask you whether or not in years past you have been involved in some criminal offenses?

A. Yes, sir, I have.

Q. I'll ask you whether or not you served three years in the penitentiary, or had a sentence for three

years in the penitentiary for having gotten in a fight and hitting a man and the man having died?

A. Yes, sir.

Q. I'll ask you whether or not you worked with this gentleman over here, the defendant, Mr. Tomley?

A. Yes, sir, I have.

Q. When was that that you worked with him?

A. Well, the dates are not very familiar, sir. It was back in 1954. I went to work for Mr. Tomley the last part of November or in December, 1954 and worked for him just a short time in 1954.

Q. And then you had a heart attack, didn't you, sir.

A. No, sir, that came later, after I went back to work for Mr. Tomley in 1955.

Q. I see. You went back to work with him in 1955. How long did you work with him then?

A. Approximately three or four weeks.

Q. And was it following that that you had a heart attack?

A. Yes, sir.

Q. Was that why you left your employment with him?

A. Well, yes, sir, because the work was too hard for me to do. It was under the doctor's advice that I left that kind of work.

Q. Were you in the hospital for a while?

A. Yes, sir.

Q. Now back in May, 1955—well, let's say May 9, 1955, that was the day before Mr. Tomley was arrested. Where were you living then?

A. At the hotel Macon.

Q. I'll ask you, was Mr. Clot living there at the time?

A. Yes, sir.

Q. Did you live on the same floor?

A. No, sir, we did not.

Q. Do you remember on the night of May 9 having seen Mr. Clot and Mr. Tomley?

A. Well, yes, sir.

Q. That was on Monday night?

A. That was Monday night.

Q. Before his arrest—

* * * * * * * *

Q. I'll ask you to tell us generally what happened that night with respect to you and Mr. Clot and Mr. Tomley.

A. Well, the best of my knowledge, sir, it happened in the wee hours of the morning, that a bell boy from the hotel came up to my room and said that Mr. Clot and Mr. Tomley wanted to see me, and when I arrived up—I went up to their room, and—

Q. By the way, were they above you in the hotel?

A. Yes, sir. I was on what they call the second floor of the hotel Macon and I believe Mr. Clot was on what they classify as the Fourth floor. And I went up to their room to talk to them. That's what happened on, I reckon it was May 9. I know it was Monday, just before they arrested Mr. Tomley.

Q. And it was in the early hours of the morning? By that what hour do you mean?

A. I would say around two o'clock, between one and two precisely.

Q. Well, now tell us what happened when you went to the room.

A. Well, Mr. Clot asked me that he wanted me to do some favors for him and Mr. Tomley, and it was a few phone calls that they wanted me actually to make for really Mr. Tomley, not Mr. Clot.

Mr. Miller:

I would like to inquire if Mr. Tomley was present and heard this conversation?

A. Yes, sir, he was.

Mr. Miller:

Very well.

A. They were talking about some man at the time I walked in the room and they finished their conversation, and then they asked me to do them a favor, to go down to the bus station and—not exactly the bus station, but past the hotel, and see if there was anybody standing around the lobby of the hotel and also around the bus station, which I did and reported back to them.

Q. Wait a minute. The lobby of what hotel?

A. The Central Hotel.

Q. Was that where Mr. Tomley lived?

A. That's where he was living at the time, yes, sir.

Q. And the bus station, was that where Mrs. Turner worked?

A. Yes, sir.

Q. They wanted you to go and check those two places?

A. Yes, sir.

* * * * * * * *

Q. Now when you first went to the room there where Mr. Clot and Mr. Tomley were, that night, did you hear any conversation about invoices or Paster or—

* * * * * * * *

Q. When you went into the room did you hear any discussion going on between Tomley and Clot?

A. Yes, sir, I did.

Q. What were they talking about?

A. Well, there was a man named, as you already mentioned, Paster whom I don't know personally, and never had heard his name before, but I do remember that name. They were talking about it and if I recall I even asked that I wait until they finished their conversation and then come back to the room, and they said no, that wouldn't be necessary because they had already, they had started to stop the conversation about the Paster man, and, er—well, if I could tell the story right straight down the line I think maybe it would make it easier, cause I wouldn't get so balled up myself. The first thing they asked me to do was to go and check at the Central Hotel and also at the Greyhound Bus station, which I did. I came back upstairs and I asked Mr. Tomley to come to my room for, I reckon you could call it, refuge, until the following day, and he asked me to do some phone calls for him. He gave me the numbers. I made exactly three phone calls for him. One was to his lawyer, a Mr. Jessup, one was to his sister, Ann Tomley, in Ambridge, Pennsylvania, and one was to Detroit, Michigan, to the man out there. I couldn't say who the man's name was. It just—the telephone number I received—

Q. I'll ask you, sir, have you ever seen these two slips of paper before, marked Govt. Ex. 10 and Govt. Ex. 11?

A. Yes, sir, I've seen both of these. One is in my handwriting.

Q. I'll ask you, sir, if when the FBI interviewed you if you got those out of your bill fold and gave them to them?

A. Yes, sir. That was Mr. Powell that interviewed me.

Q. Now I'll ask you, sir, how did you come to have those slips of paper there?

A. Well, this is part of the conversation that was up at the hotel room that first night. This was part of the favors they wanted me to do for them, for Mr. Tomley.

Q. Now I'll ask you, on this one marked Govt. Ex. No. 11, 93403—T. O., whose handwriting is that?

A. It's mine, sir.

Q. Did you write it that night?

A. I think it was the following morning, sir, I wrote that, Tuesday morning, would be the 10th

Q. Who gave you that number?

A. Mr. Tomley.

Q. And you wrote it down?

A. Yes, sir.

Q. Is this your handwriting here?

A. No, sir, that's Mr. Tomley's there.

Q. I'm showing you Govt. Ex. No. 10. That's Mr Tomley's handwriting?

A. Yes, sir.

Q. Did you see him write it?

A. Yes, sir.

Q. When did he write that?

A. He wrote that in my room on Tuesday, the same day that other paper was wrote.

Q. Now what did he tell you, if anything about those numbers on those two slips of paper?

A. Those numbers were to some party or concern in Detroit, Mich., and when I called not to say who I was or not to ask any questions or say too much outside of whoever answered to say: "They have Joe surrounded, be careful." And hang right straight up.

Now this one number, this Temple number, I couldn't get anybody to answer there.

Q. That's this number on Govt. Ex. No. 10?

A. Yes, sir.

Q. That's the one Mr. Tomley himself wrote out?

A. Yes, sir The other one I received an answer Some man said "Hello", and that's when I made that statement that they have Joe surrounded; be careful and hung directly up.

Q. Do you know whether or not that number, 93403 in Detroit is Paster's number?

A. No, sir, I don't.

Q. Where did you place those calls from?

A. Well, let's see. I made three calls. One was from the hotel. That was to Mr. Jessup. The call to his sister, Ann Tomley, was made from the Chuck Wagon, which is a tavern over here on the lower end of Cherry Street, and this other call to that T.O. number, that was made over here at Glass' Pharmacy, which is now Marshall's Pharmacy, on the corner of Broadway and Cherry.

Q. Did he give you the money to make all those calls?

A. Yes, sir.

Q. Did you call Mr. Jessup?

A. Yes, sir.

Q. You know Mr. Jessup, the lawyer?

A. Yes, sir, I do.

Q. When did you call him?

A. I called him on Tuesday morning.

Q. I see.

A. I would say it was approximately 10 o'clock. Might be a little later.

Q. Did you call the other two on Tuesday morning too?

A. One was on Tuesday morning. That was to his sister, and the other one was made that evening, late that evening, to the Temple number and also to that T.O. number.

Q. I see. Now what did he tell you to do in the way of calling his sister. Did he give you any instructions at all?

A. Yes, sir, there were some instructions to ask his sister had she sent the invoices down, and if she did how did she send them, and to who did she send them to, and I was to—if they hadn't been sent, I was to try to get them the best I could, and if I ever did receive them to destroy them, flush them down the commode, tear them up, burn them, or just destroy them period.

Q. Did you talk to the sister?

A. Yes, sir.

Q. What's her name?

A. Ann Tomley.

Q. And where was she?

A. She was in Ambridge, Pennsylvania, and I had to get in touch with her through Sears Roebuck up in Ambridge.

Q. And did you call her and talk to her?

A. Yes, sir, I talked to her personally.

Q. What was the nature of your conversation with her?

A. Well, I told her that they had picked up Joe and that he wanted to know—that I was making a phone call for him to find out about the invoices, that Mr. Tomley said she would know about, and if she had already sent them or if she hadn't to destroy them up at that part of the country, that he didn't want them to be sent down here. What they contained I do not know.

Q. I see. I'll ask you, sir, whether or not Mr. Tomley gave you the key to the post office box?

A. Yes, sir, he did.

Q. And did you go over and look in the post office box?

A. Yes, sir.

Q. When did he give you the key to the post office box?

A. I think that was on Tuesday too, sir.

Q. I'll ask you whether or not he said anything about this letter coming in after that, after he told you to call his sister Ann?

A. Well, yes, sir, he said if it did come in and it was sent—now this is before the phone call was made—that if any letter did come in and it was post marked Ambridge, Pennsylvania, to destroy it, for me to destroy it, but it had been sent when I called his sister.

Q. His sister told you it had already been sent?

A. Yes, sir.

Q. Did you report that back to Mr. Tomley?

A. Yes, sir.

Q. Then was there any further discussion after that about this letter?

A. Well, yes, sir. Mr. Tomley had stated that it was taken care of, that Mrs. Turner had destroyed the evidence or the invoice, and destroyed the letter that she had received.

Q. He told you that after that?

A. Yes, sir.

Q. I'll ask you, sir, do you have anything against Mr. Tomley?

A. No, sir, nothing whatever.

Q. Are you mad at him or anything?

A. No, sir, I have no right to be mad at him.

Q. Now let me ask you, when you were working with Mr. Tomley were you a truck driver for him?

A. Well, yes, sir, part truck driver and at the time I was under his wing to be his foreman out there at the warehouse.

Q. Well, now, let me ask you, when you drove the truck down there to the disposal yard where you loaded up, to get materiels from the Base, did Mr. Tomley generally meet you down there?

A. No, sir. Sometimes he would and sometimes I would go down on my own.

Q. I see. I'll ask you, did you ever see Mr. Tomley there move packages from one stack to another?

A. Well, yes, sir, I have.

Q. Have you seen him take them off of stacks that you knew didn't belong to him and put them on the stack that you were going to have loaded on your truck?

A. Well, Mr. Evans, I could not answer that. I tell you the reason why I couldn't answer it. Lots of times, to get this all straightened out, I would go down for certain lots and how many lots Mr. Tomley had bought I really wouldn't know, and lots of times, like I explained to Mr. Powell, when we take something off of a pallet, like say it was in this lot over here, and put it on one I was loading, I would not know definitely if that was Mr. Tomley's or not, and I couldn't rightfully answer that whatsoever. I know he has done it, but if they was his own or not, I wouldn't know. I wouldn't know maybe for a week. They changed the lots out there so frequently and move from place to place so much.

Q. I see. You saw him transferring boxes off of stacks that you weren't loading on to the stack you

were loading, but you don't know whether that other materiel was his or not?

A. Yes, sir.

Q. You ever see him give this big negro Tooks out there a five dollar bill?

A. Yes, sir.

Q. That's the fellow that's supposed to help load?

A. Yes, sir. I think that was given with the idea of getting our trucks loaded faster when we were down there.

Q. I see. Now where was Galbraith during this time, Mr. Hugh Galbraith?

A. Well, the only thing I could answer on that, sir, is he had this little office that was inside of the warehouse, the disposal unit out there, and lots of times before we would load the truck, if Mr. Tomley was to meet me out there, if I take a truck out and he would come in his car or his panel truck that he had at the time, that he would go out and check the lot that I was going to pick up that day with Mr. Galbraith.

Q. How long would they stay out there sometimes out of sight of you?

A. Oh, maybe 15 minutes, half hour, forty five minutes.

Q. What were they doing, you know?

A. No, sir.

Q. Were they very close, intimate, so to speak?

A. Well, I reckon they were just as friendly as anybody else out there, sir.

Q. I see. Now, I'll ask you this. Did you ever drive out there in the truck and there would be a bunch of other people there waiting to be loaded u; and you would be given the preference?

A. Yes, sir.

Q. Was that a general custom, that you all got the right of way?

A. Well, no, sir, I wouldn't say it was the general practice out there. They took them as they would line up in the morning.

Q. Did you all have to stay in line?

A. Well, lots of times I wouldn't have to, no, sir.

Q. Who would let you go thru and get loaded first?

A. Well, the checker would come out. It would either be—most of the time it was Tommy Tooks, the colored boy that usually used to load my truck.

Q. The fellow he gave the $5.00 to?

A. Yes, sir.

Q. Did he work under Mr. Galbraith there?

A. I reckon so, sir. I think Galbraith was the foreman.

Q. And you all would get your loading done while the rest were waiting their turn?

A. Yes, sir.

Q. Did you ever know Mr. Lenteni?

A. No, sir, I never did until I met him out in the hall.

Q. Did you ever know of him working for Mr. Tomley?

A. No, sir, I didn't.

Q. Tell the jury about the time that you had the post office key and went and got a letter for Mr. Tomley and brought it up to Mr. Tomley's room.

A. Well, I'll have to put that a different way than you state it. I was called over to the Central Hotel by a colored boy by the name of Shine who was a bell boy over there, and he handed me a letter that came from Florida to give to Mr. Tomley. I had made it up with him thru Mr. Tomley to receive all mail that came directly to the Central Hotel and for

me to give it to Mr. Tomley the best way I could. Well, I remember this one letter which I er—I be frank with you, I hid it in my shoe when I went up to bring it to Mr. Tomley's room. When I knocked at the door Mr. Tomley let me in and I started to say something and Mr. Tomley pointed up to the ceiling like there was—I reckon you would call it, mircrophones hidden in the room, so I said "Let's go downstairs for a cup of coffee", and as we walked out in the hall he asked me what was it all about. I said "I have a letter for you", and I give him the letter from my shoe, and he stayed with me about, maybe, two or three minutes. He opened the letter and there was money in the letter, but that was from his niece or nephew or something like that.

Cross Examination.

By Mr. Miller:

Q. Mr. Stauble, you say you spent three years in the penitentiary for killing a man. When was that?

A. Back in 1944.

Q. You also were dishonorably discharged from the Marines, or the Army?

A. Yes, sir.

Q. You ever been pardoned?

A. No, sir. I haven't filled out any forms whatsoever.

Q. Don't feel like you could get one. Is that the reason?

A. No, sir, I had never given it a thought.

Q. Well now, where were you working to start off with, before you started to work with Mr. Tomley?

A. I was with King Brothers circus out of Macon here.

Q. And the circus took off and left you behind? Is that right?

A. No, sir.

Q. What happened? You left the circus?

A. Yes, sir.

Q. Here in Macon?

A. Yes, sir.

Q. Did you have a job when you left them?

A. No, sir.

Q. What was the first job you did have?

A. With the circus or here?

Q. No, after the circus had gone and you were here?

A. I was still with the circus when I first started to work with Mr. Tomley. I was working as a spare hand for Mr. Tomley but was still on the payroll of the circus.

Q. When did you start to work for Mr. Tomley?

A. Last of November or the first of December, 1954.

Q. And you worked that time for how long?

A. Well, the first week I worked for Mr. Tomley two days, and I would say out of the, the first—in '54, maybe approximately three weeks, for a total, might be about 15 days, would make it right.

Q. And how many total days did you work for him in 1955?

A. Part of January and part of February. I would say maybe about five weeks, maybe six weeks.

Q. Total you mean?

A. Yes, sir.

Q. And you left him there about what time?

A. I got sick and went to the hospital sometime around the first of March, early part.

Q. Were you working for him at the time you got sick?

A. Yes, sir.

Q. And then you got out of the hospital and where did you go to work?

A. I didn't go to work.

Q. Who bed you?

A. Mr. Tomley and Mr. Clot.

Q. They were just giving you handouts. You weren't able to work?

A. Yes, sir.

Q. How long did that go on?

A. About, maybe a week.

Q. Then what happened?

A. I left for New York.

Q. Did what?

A. I left to go to New York from here.

Q. When was that?

A. That was in May. I was supposed to leave in March, because Mr. Tomley gave me the money to go home on.

Q. You didn't work for him after you had the heart attack?

A. No, sir.

Q. Who took care of you after he gave you the money to go home on in March and you didn't go until May? How did you eat, where did you sleep?

A. At the hotel.

Q. Who paid the bill?

A. Well, that—I think that's awfully personal. It wasn't Mr. Tomley.

Q. Sir?

A. That's kind of personal. It wasn't Mr. Tomley or Mr. Clot.

Q. Who was it?

A. It was a girl I was going with.

Q. Is that the same room you say Mr. Tomley came into the night before he was arrested?

A. No, sir.

Q. Who was paying for that room that night?

A. When Mr. Tomley was there? Mr. Tomley was paying for it.

Q. How long had he been paying for it?

A. Oh, about three weeks. See, when I was working for him Mr. Tomley was paying my room rent and also giving me a salary.

Q. I understand, but you didn't work for Tomley after you had your heart attack?

A. No, sir.

Q. And you had that sometime about March 1?

A. Yes, sir.

Q. And for about three weeks up until the time Mr. Tomley was arrested he was paying for that room you were living in?

A. Yes, sir.

Q. Was he feeding you too?

A. Yes, sir.

Q. Well, where does the girl friend come in? In between March 1 and three weeks prior to the arrest of Mr. Tomley?

A. No, sir. I was going with her mostly, well before I went to the hospital I was going with this girl.

Q. Well, who supported you and fed you and housed you between March 1 and about the middle of April?

A. Well, mostly, the Macon Hospital, because I stayed there almost four weeks. Mr. Tomley took care of me after I got out of the hospital for just a little over a week.

Q. And the money he gave you to go to New York on, did you go to New York on that money?

A. Yes, sir.

Q. When?

A. Well, that was around the first of May of last year.

Q. All right, sir, and you've stayed up there ever since?

A. Yes, sir.

Q. Until you got a subpoena?

A. Yes, sir.

Q. How did you go, on the train?

A. On the bus.

Q. What bus?

A. Greyhound.

Q. You got your ticket in your pocket?

A. No, sir, that was a year ago.

Q. You testified you had these little papers in your pocket?

A. Yes, sir.

Q. But you didn't keep your Greyhound ticket?

A. No, sir.

Q. Where are you originally from?

A. Hartford, Conn.

Q. Is that where your father is?

A. Yes, sir.

Q. Is that where he was at the time you were down here and Tomley was taking care of you?

A. No, sir.

Q. Where was he then?

A. I was with Mr. Tomley.

Q. He was?

A. I was with Mr. Tomley.

Q. I say where was your father at that time?

A. Oh, I reckon he was up home, because he made a call for me to see if I could go home.

Q. Well, now, you didn't do any work you say from about March 1 to May 1 when you went to New York. When you got there did you get a job?

A. Yes, sir.

Q. What doing?

A. Working for the Salvation Army.

Q. What day of the week did you leave to go to New York?

A. I don't know.

Q. You don't know whether it was Monday or Saturday or Sunday?

A. No, sir, I don't.

Q. Was it morning or afternoon?

A. It was night.

Q. And your best recollection is it was about May 1?

A. Yes, sir.

Q. That's '55 we are talking about?

A. Yes, sir, last year. That all happened now after they had gotten Mr. Tomley.

Q. When did they get Mr. Tomley?

A. That was on a Monday around the 9th, so it couldn't have been—I left way after that, so there's no sense in trying to get me to putting it down as May 1 that I went to New York, because I didn't go to New York on May 1.

Q. I'm not trying to get you to put it down any way. You just put it where you please, sir.

A. That's just the way I'm trying to do, but—

Q. When did you go to New York?

A. I've been up in New York almost a year. I stated it was about eleven, maybe eleven and a half months ago. I could really check it for you if it's

necessary, from the time I went to work for the Salvation Army.

Q. All right, at the time Mr. Tomley was arrested you were staying in the room that Tomley was paying for?

A. Yes, sir.

Q. And you had not worked up until that time?

A. That's right.

Q. How long did you stay in town after Mr. Tomley was arrested?

A. About a week.

Q. Did he pay for you then?

A. No, sir. That's when I was with this girl. She was lending me the money.

Q. That was the girl friend?

A. Yes, sir.

Q. I see. We've got that straight! Where and when was the first time you talked to Mr. Victor Powell, the FBI agent?

A. I would say that was, er, either on a Wednesday, which would have been, let's see, the 11th or 12th of May.

Q. And where was that?

A. That was right upstairs here.

Q. Did you go up there or did he come and get you or how did that happen?

A. No, sir, I went to Mr. Clot's room, and—

By the Court:

I think we will suspend for lunch.

(Recessed 12:30—2:00 p. m.)

Q. Mr. Stauble, did you go look up Mr. Powell before you talked to him the first time?

A. No, sir. The story on that is I went to Mr. Clot and told him that I was most upset and I wished that he would get in touch with the Federal Bureau of Investigation, because I figured they would pick me up any how, and Mr. Clot called up Mr. Powell and made arrangements that same night to appear over here to talk to Mr. Powell and Mr. Peterson.

Q. You say that same night, what do you mean the same night? Same night you made these telephone calls?

A. No, sir. About two nights later, either Thursday or Friday night, I would say.

Q. And did you come over and talk to Mr. Powell?

A. Yes, sir.

Q. Well now, this girl friend of yours, her name was what?

A. Pat.

Q. Pat what?

A. Mise.

Q. And she came to you, did she not, and told you that she and her boy friend were under a little pressure and investigation by Mr. Powell's office for white slavery?

A. No, sir, she did not ever come up to me with those remarks at all.

Q. And she wanted you to go to Mr. Powell and help out on the Tomley business and take the pressure off of her boy friend?

A. This was about, maybe a week, or a week and a half later that she asked me about coming back over here to Mr. Powell and telling him more than what I had said the first time I came up with Mr. Clot, which I did.

Q. Well, was she or her boy friend implicated in a white slavery investigation?

A. That, I don't know, sir. I can't say. I know he was in—I can't pronounce the town—Virgilville, or whatever it is. He was in a road camp up there.

Q. What was the boy friend's name?

A. All I remember is Steve, or something. I don't know his last name.

Q. You ever meet Steve?

A. No, sir

Q. What was the woman's name with whom you left Macon shortly after Mr. Tomley was arrested?

A. Pat Mize.

Q. Same woman?

A. Yes, sir.

Q. Have you ever set eyes on Steve, who was under pressure?

A. No, sir, never have.

Q. Now why was Pat insistent that you come over and tell Mr. Powell more than you had already told him? What interest did Pat have in it, is what I'm getting at?

A. That, I don't know, sir. All I can say is that at the time I was figuring that it was on account of the condition I had,

* * * * * * *

Q. You weren't under any pressure or tension because of the probability of the girl friend being prosecuted in this white slavery deal?

A. No, sir, she never brought that up to me at all.

Q. Where did you meet Pat?

A. At Ann's Tic Toc.

Q. What's that, a tavern on Broadway?

A. That's on Broadway, yes, sir.

Q. Was she in there by herself?

A. No, sir, she was a waitress, sir.

Q. Working there?

A. Yes, sir.

Q. And that's where you met her?

A. Yes, sir.

Q. Did you marry her?

A. Sir?

Q. Did you marry her?

A. No, sir.

Q. Where is Pat now?

A. I couldn't say, because I haven't seen her since I left here.

Q. Oh, I thought you said you left Macon with her?

A. I did, but she left me up in New York about two days after we got there, and that's pretty close to a year.

Q. Did Steve come back?

A. No, sir, he was serving time.

Q. What for?

A. I don't know.

Q. Well, now, let's talk a little bit, sir, about this exhibit here, Govt. Exhibits 10 & 11. I first hand you Govt. Ex. 10. Now who wrote that writing that's on that exhibit?

A. This is Tomley's over there, Mr. Joe Tomley's writing.

Q. When was that written according to your testimony?

A. This was written in my room the day after Joe was supposed to have been apprehended. This was, well the night that I went to Mr. Clot's room, it was the next morning. This was in my room.

Q. Well, assuming he was arrested on a Tuesday morning, was that Tuesday that that was written?

A. Yes, sir.

Q. What time of day?

A. This was before I got in touch with Mr. Jessup.

Q. What time was that, please, sir?

A. Oh maybe nine, maybe ten o'clock in the morning.

Q. This is Tuesday morning, same morning he was arrested?

A. Well, I think actually the officers went to Mr. Tomley to try to get him on a Monday, cause they got no—

Q. Just answer my question. Was it the day he was arrested?

A. I don't know for sure which day he was arrested.

Q. You don't know when he was arrested?

A. No, sir. I know they were after him from Monday on, but which day he actually appeared to be caught, I don't know.

Q. Well, do you know that Mr. Powell saw Mr. Tomley at midnight the night before you say that this was written?

A. No, sir, I don't.

Q. You wouldn't doubt that, though, would you?

A. I would hate to say either way.

Q. All right, sir. So the morning after the bell boy called you down, said Clot wanted to talk with you, about nine or ten o'clock is when you say Mr. Tomley write that on Ex. No. 10?

A. This was in my room when I asked Mr. Tomley to come to my room and leave Mr. Clot's room.

Q. I see. However, that was written the morning after Mr. Clot had sent for you to come down?

A. Yes, sir.

Q. Whether that was the day Tomley was arrested or not, that was the day it was written down?

A. Yes, sir, sure was.

Q. About nine or ten o'clock?

A. Yes, sir.

Q. What is that number?

A. This is a Detroit number, all I can say is it's 15217.

Q. And did you call that number?

Q. What number did you give the operator?

A. This number right here, Temple 15217.

Q. And what time of day was that?

A. That was after Mr. Jessup came to the house, I mean up to the hotel. I would figure it was maybe, in rough figures, between twelve and two, or near facsimile to that.

Q. Did you get an answer?

A. No, sir, I did not.

Q. Where did you make the call?

A. This call was made from, er, the Chuck Wagon.

Q. And where, may I ask, is the Chuck Wagon?

A. On the end of Cherry Street, this side of the Grady Hotel.

Q. All right, sir. Now with respect to Govt. Ex. 11, who wrote that?

A. This is my writing.

Q. What is it written on?

A. It's written on a check what you get from a—I think this check could have come from Glass's Pharmacy, because that's the kind at the time that they had. It's a counter check.

Q. Where did you get it from?

A. Where did I get this from?

Q. Yes, sir.

A. Must have been in my pocket because I remember taking this out for a piece of paper that was in my room.

Q. Are you accustomed when you go into a drug store and buy something to paying the bill and putting the ticket in your pocket?

A. Lots of times, yes, sir.

Q. What is the purpose of that?

A. If it's just an extra piece of paper, I can always ask for it just like any in this Court room.

Q. That's your explanation?

A. Yes, sir. Because definitely, I couldn't say either way how I got this paper.

Q. You do say it came out of your pocket?

A. Yes, sir.

Q. And who wrote that on there?

A. This is my handwriting.

Q. When was that writing written?

A. Same morning, Tuesday morning.

Q. Same morning you say Mr. Tomley wrote the other, Ex. 10?

A. Yes, sir.

Q. Did you write that with your own fountain pen?

A. No, sir, I didn't have one.

Q. Whose pen did you use?

A. Mr. Tomley's.

Q. Why didn't he write it?

A. I don't know.

Q. You said he had written this one?

A. Yes, sir, he wrote that.

Q. You can't explain why he wrote one and asked you to write the other one?

A. No, sir.

Q. When he had to give you his pen for you to write it with.

A. That's right.

Q. And they were both written within a few minutes of each other?

A. I would say so. Bound to be, cause he didn't—I left when Mr. Jessup got up there.

Q. It wasn't a case where you went out and tried the number on Exhibit 10 and got no answer and came back and got another?

A. No, sir. I got three the same morning, the one for Ann Tomley and this one and that one there.

Q. All right, sir, we are still talking about Exhibit No. 11 that you have. What number is that?

A. This is TO 93403.

Q. And when you got the operator what number did you tell her you wanted?

A. I told her this number right here!

Q. Just give me the exact language you gave the operator.

A. If I recall right it was TO 93403.

Q. You didn't know what TO stood for?

A. No, sir.

Q. She didn't ask you what TO stood for?

A. No, sir.

Q. You know now what it stood for?

A. No, sir, I still don't know what it stands for.

Q. And when Mr. Tomley, you say, gave you that number, you didn't ask him what exchange it stood for?

A. No, sir, I sure didn't, cause I think that's—

Q. I can't hear you, sir.

A. Sir?

Q. I didn't hear that last.

A. I think the exchange is TO, before the numerals.

Q. Well, that stands for some work just like EL stands for Elgin?

A. Yes, sir, but I still don't know what.

Q. And all you say you gave the operator was just TO and then the numerals?

A. Yes, sir.

Q. What time of day did you make the phone call?

A. I think this was in the afternoon of Tuesday.

Q. Well, it was certainly after you had tried No. 10, this Temple number, and got no answer?

A. Yes, sir.

Q. How much later would you say?

A. Well, might as well say, if you want to put it that way, between two and four.

Q. It's not how I want to put it.

A. Well, sir, I can't recall. I mean, this is a year ago. I just know I made the phone calls, but what hour of the day I couldn't say, and I would hate to make myself out a liar by saying it was two o'clock when maybe it was seven. That, I couldn't say. I think I have got that right to say that after a year you can't remember time so well.

Q. Very well, then it could have been any time between two and seven?

A. Yes.

Q. The same day we are talking about?

A. Yes.

Q. And do you know or did you get an answer to that call?

A. Yes, sir, somebody said hello.

Q. And from where did you place that call?

A. This was from Glass' Pharmacy.

Q. Can you explain why you didn't go right ahead and make that call to the TO number when you got no answer to the Temple number?

A. No, sir, I can't.

Q. You can make no explanation of that?

A. No, sir.

Q. With whom did you talk in the meantime, between two and seven p. m.?

A. Well, maybe numerous people.

Q. Anyone connected with this case?

A. No, sir, I don't think so.

Q. You don't think so?

A. No, sir.

Q. Did you talk to Miss Pat?

A. Yes, sir, because she was working. She went to work in the afternoons.

Q. Where did Miss Pat live?

A. Last I knew she lived on Mikado Avenue.

Q. I'm talking about when you and she were together here in Macon?

A. Mikado Avenue.

Q. And then you say, I believe, that Mr. Tomley gave you a third number to call his sister?

A. The first call that I made for Mr. Tomley was directly to his sister.

Q. And from where was that placed?

A. From the Chuck Wagon in the morning.

Q. Do you have that number?

A. No, sir, all I can say is it was Ambridge, Pennsylvania, and it was to Sears Roebuck.

Q. Did he write the number down for you on a piece of paper, or did you write it down?

A. No, sir. I wrote Ambridge on one piece of paper, a laundry ticket.

Q. And where is that?

A. It's right there. I think you'll find some other things on the back but the only number you'll find on there will be Ambridge, so I could remember the word.

Q. This 29576, that don't mean anything?

A. Not now it doesn't.

Q. What did it mean then?

A. I couldn't say.

Q. Is your testimony that Mr. Tomley gave you a key to a post office box?

A. Yes, sir.

Q. And when was that?

A. This was either Tuesday or Wednesday.

Q. Was it before he was arrested or after?

A. That, in all sincerity, I couldn't answer, because I can't recall.

Q. Did you give the key back to him?

A. Yes, sir.

Q. When was that?

A. I would have to answer that the same way, sir, because I really don't remember.

Q. Well, can you explain to us why you are so definite about the time of these phone calls but you can't recall about the key?

A. Yes, sir, because this was actually before Mr. Tomley was arrested for this, because he gave me all these right after that night, which I'll never forget if I live to be a thousand, being called out of bed and up into a room to find out the man I was working for was in trouble. I think an awful lot of Mr. Tomley. He's done me a lot of favors, which I'll never forget regardless.

Q. Well, at that time did you think more of Tomley or more of Pat?

A. That I couldn't answer either. I think I could put them both on the scale and I think they would balance.

Q. You weren't living with Tomley though were you?

A. No, sir. For that matter I wasn't living with Miss Mize either.

Q. And Tomley you say was in trouble and Miss Pat was in trouble.

A. I didn't say Pat was in trouble.

Q. I mean Miss Pat's boy friend.

A. Yeah.

Q. But your love didn't go beyond Miss Pat over to her boy friend?

A. That's right.

Q. Did you ever tell anybody that Miss Pat came to you and told you that if you didn't help the FBI out on that case against Tomley that she herself was going to be implicated in this white slavery case against Steve?

A. All right, I think I can kind of vaguely remember what you are trying to drive at. Maybe I can help you out on that. The night that I went to Mr. Clot and asked him to get in touch with the FBI, there was nothing about white slavery mentioned, but that Pat was messed up some way with this fellow Steve, and it would help out if I would come to the FBI, that she was working with the FBI, if I recall her statement, something on that order. Now I hate to be quoted exactly that I was forced to go, because I wasn't forced to go. I'm over 21, nobody forces me very often; that she asked me to help her out of a jam. What the jam was she didn't state, and when she said that she would be implicated in it I was still nervous and upset, and that's when I went to Mr. Clot. I even went with another boy, a friend of mine.

Q. What was she about to get implicated in?

A. That, I couldn't say. She never said.

Q. She was inviting and invoking your assistance to keep her out of trouble?

A. No, I wouldn't say she was invoking my assistance whatsoever, because I was talking freely to Miss Mize all about this happening during the week.

Q. She was talking freely about her difficulty?

A. No about the difficulty with Mr. Tomley.

Q. Well, she did insist that you go over to the FBI, that she thought it would help her situation?

A. She asked me; she didn't insist.

Q. Well, was her littlest request your command?

A. No, sir.

Q. Did you ever get mail out of Mr. Tomley's box, post office box?

A. No, sir, I don't think I did.

Q. Did he ever entrust you with a key to it before?

A. Oh wait, sir, wait. Let me take that back. Now lots of mornings while we were eating breakfast I would come over and get the mail for him. This was all before this come up.

Q. I understand. He gave you a key?

A. Oh, yes, sir.

Q. Were he and Mr. Clot together in this business at that time?

A. Yes and no. Now sometimes I came over here just for Mr. Tomley. I think that they, er, were, I believe they had the same box. Now I don't know for sure, but then after the last time I worked for Mr. Tomley, when they had C-T Sales, everything was in this box down stairs. The number was 15 something, but I can't recall it.

Q. Well, what was the box number. Do you remember?

A. Not off hand.

Q. Did you ever see Clot go into it? Were you ever present when he went into the box?

A. No, sir.

Q. Do you know of any reason why Mr. Tomley would ask you to go into his box or ask you to make these phone calls rather than asking Mr. Clot to make them, his partner?

A. No, sir. A lots of times Mr. Clot wasn't in Macon. He was in Miami.

Q. I'm talking about the night you say these numbers were written down and the calls made to Detroit. Can you give any explanation why you say Tomley requested you to do it instead of Clot?

A. No, sir, I wouldn't say, unless it's because I had made some phone calls for him and—

Q. Sir?

A. Unless it was because I had already previously made phone calls and they were in business together and they didn't want to be implicated together, if you want to put it that way, yes, sir.

Q. He was going to implicate you rather than Mr. Clot?

A. No, not me; Mr. Clot.

Q. Would it implicate Clot any more for Clot to make them than you for you to make them?

A. It might have had. In my estimation it could have had.

Re-Direct.

By Mr. Evans:

Q. I'll ask you, did you tell the FBI anything that wasn't true in this case to help out this young lady's boy friend?

A. No, sir, I don't think I did.

Q. He was kind of your competition, wasn't he?

A. Well, I would say no to that because I didn't even know the fellow and I think that all the time I

was going with Miss Mize she had seen him about twice.

Q. I see. If she had wanted you to have done something to help him out, and he was her number one choice, you wouldn't have gone for that too much, would you?

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Q. Now, Mr. Miller asked you why Mr. Tomley didn't call on his partner Clot to do this telephone calling. About that time Mr. Clot was keeping out of circulation too, wasn't he?

A. Well, the best of my knowledge I would say yes.

Q. He thought he was going to be arrested, didn't he?

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Q. Was Mr. Clot rambling around in the lobbies and on the streets or was he staying in the hotel room?

A. Mr. Clot, to the best of my knowledge, wasn't, well, you would say in circulation as much as I was.

Q. Yes, sir. As a matter of fact Mr. Tomley could have stayed in Mr. Clot's room instead of coming to yours, couldn't he?

A. Yes, sir.

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Q. Was there or was there not any reason why Mr. Tomley couldn't have stayed in Mr. Clot's room?

A. Not to my knowledge sir. I think that I maybe

had more to do with that than anybody else. They were both tired, I know, because I know that type of work is very strenuous on anybody, and when I asked Mr. Tomley to come to my room I think he and Mr. Clot were both in favor of it, even myself.

Q. So far as you know was there any reason why Mr. Clot or Mr. Tomley couldn't have made these telephone calls straight from the hotel room?

A. Yes, sir.

Q. Why?

A. Because I think that, er—

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A. Well, I couldn't answer the question then.

Q. Now when you told Mr. Clot you were coming to the FBI what did he do?

A. He called Mr. Powell for me and made arrangements and an appointment to meet Mr. Powell up here.

Q. Did or did not he come with you to the FBI?

A. Yes, sir, he sure did.

Q. Did or did not he sit thru all of the conference that you had with the FBI?

A. He sat thru all of the conference and I think that his presence kept me from saying exactly the things I—

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A. All right, I can retract that statement. With Mr. Clot present I could not say what I wanted to say.

Q. Now, did you see the FBI again after that, out of Mr. Clot's presence?

A. Yes, sir, I did.

Q. Did Mr. Clot know you were going back to the FBI again?

A. That I don't know, sir. I don't think so.

Q. Now, I'll ask you who furnished the money for you to leave town, just after all this happened?

A. Well, I am going to have to say Mr. Tomley and Mr. Clot. The night that Bob took me to the station was right after I talked to Mr. Powell, and I believe that Bob didn't have the money with him, and I think we got it from Mr. Tomley, and I think with them both being in the business they both reimbursed me the money.

Q. Gave you the money to go up where?

A. Hartford, Connecticut.

Q. Now have you seen Mr. Clot since this case has started?

A. No, sir, outside of out in the hall with the other people out there.

Q. But you have seen him there in the hall?

A. Yes, sir.

Q. Among the witnesses. Now has he talked to you any?

A. Yes, sir, he talked to me the other morning and stated that he was sorry to see me here, and I said I was sorry.

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Q. I show you Govt. Ex. No. 14 now and ask you is that the laundry ticket that you are talking about that you wrote--

A. Yes, sir, I wrote this—29576, this marking here, this adding of 4.75 and also this "Ambridge", but this and this other one I did not write that.

Q. You wrote this "Ambridge" on there?

A. Yes, sir, I did.

Q. When did you write that on there?

A. I was bound to write that early Tuesday morning, sir.

Q. That was Mr. Tomley's sisters' address, I believe?

A. Yes.

Q. I would like to ask you did you get that dishonorable discharge from the Marines, what was that for?

A. Well, sir, I'm going to have to retract my statement from this morning when Mr. Miller asked me that question. I realized that I had neglected to say that it was not a dishonorable discharge. It was an undesirable discharge for reason of conviction in a civil Court. That was right on the discharge that I had. A dishonorable discharge in any branch of the service comes on yellow paper, and this was white.

Q. And it was undesirable?

A. Undesirable for conviction in the civil Court.

Q. Did that refer to the conviction in which you got three years for the man having died following the fight?

A. Yes, sir, sure did.

Q. That was the same transaction?

A. Yes, sir.

Q. Have you ever been convicted of any crime involving your personal honesty?

A. Unless you--

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Q. Have you ever been convicted for stealing?

A. No, sir.

Q. Have you told the truth in this case?

A. Yes, sir, everything I have told is the truth.

Re-Cross.

By Mr. Miller:

Q. Have you ever been charged with anything other than killing this man?

A. Yes, sir.

Q. What was that?

A. Fighting, one more time, for which I received a jail sentence of 30 days which was suspended, and a $50 fine which I paid.

Q. Is that all?

A. No, sir.

Q. Let's have the balance.

A. The other was for being picked up at the hotel Macon for lottery with Geneva Strickland.

Q. Was she a female?

A. Yes, sir.

Q. What happened to that one?

A. I was fined, which Mr. Tomley paid my fine for me.

Q. All right, sir, let's have the next one.

A. That's it.

Q. That's the crop?

A. That's the crop.

Q. How old are you?

A. I'm 35.

Q. Well now, I understood you, before the noon recess, to say that you were given money by Mr. Tomley to go up to New York or Detroit or Hartford, or wherever it was, sometime just after you got out of the hospital, but you didn't go?

A. That's right.

Q. And that you used the same money he gave you then to go when you actually did go?

A. No, sir. The ticket was bought the night I came up here with Mr. Clot to the FBI.

Q. What happened to the money they gave you to go with just after you got out of the hospital?

A. It was bought. I had the ticket in my pocket. I had nine dollars and some cents left.

Q. When did you buy the ticket?

A. I bought that the night that I came up here with Mr. Clot to the FBI.

Q. I'm not making myself clear evidently, or I'm misunderstanding you. When did you get out of the hospital?

A. I would say it was the last of March or the first of May.

Q. And at that time were you given money by Mr. Clot or Mr. Tomley to go home to see your father?

A. Not at that time, no sir.

Q. Well, when were you first given money to go?

A. Right after Mr. Tomley was arrested.

Q. Well, you were given money for your trip just once then?

A. Just once.

Q. Well, I didn't understand you. Now before you left town you cleared with Mr. Powell that it would be all right, didn't you?

A. Yes, sir.

Q. In other words, any implication of the District Attorney that they were trying to get you out of town, there's nothing to that because you cleared with Mr. Powell before you left?

A. Well, I don't know. I could put it that I was scared to stay here.

Q. Well, you cleared with Mr. Powell before you left town?

A. Yes, sir.

Q. And if you were scared to stay down here they were helping you get away by paying your way, weren't they?

A. Well, I could figure it that way.
Q. All right, sir.

(Witness excused.)

MR. VICTOR POWELL, being re-called by the Government, testified as follows:

Direct Examination.

By Mr. Evans:

Q. Mr. Powell, I show you Govt. Ex. 10 and Govt. Ex. 11 and ask you, sir, if you have seen those before?

A. Yes, sir, I have.

Q. Where did they come from?

A. I got them from Mr. Stauble.

Q. Did you keep them in your possession from the time of getting them from Mr. Stauble?

A. Yes, sir, since May 14, 1955.

Q. I see. What about this Govt. Ex. 14?

A. Yes, sir, I got all three of them at the same time.

Q. Now Mr. Powell, you heard the testimony of the defendant, Mr. Tomley, about the telephone conversations?

A. Yes, sir.

Q. The ones Mr. Wright had and the preliminaries to that conversation, out of which Mr. Tomley said that the man at the desk at his hotel told him that Mr. Wright was trying to get him by phone and wanted to talk to him about some motors.

A. Yes, sir.

Q. Tell us what you know about Mr. Wright's activities the afternoon of the 9th of May, 1955?

A. Well, that was the day that I first talked to Mr. Wright. He had been arrested the previous Friday by the Warner Robins Police Department and had in his possession some of the small motor gun timers, and I talked with him with Mr. Crutchfield at the Base security office at Robins Air Force Base, and then later went over to his home with him where we found 24 of the motor gun timers that he had taken from the Base, according to his statement, and during the interview Mr. Wright told us that he was getting those for Mr. Tomley. We asked him if he would mind calling Mr. Tomley and he said that he would not, and we asked him if he would mind if I listened in on the telephone call, and he stated that he would not. We went to the Victory Drug Store at Warner Robins late in the afternoon. It was pretty close to six o'clock, either a little before or a little after, at which time he made a telephone call from a pay booth directly to the Central Hotel and asked if Mr. Tomley was there, and apparently they rang his room and told him that—

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A. Well, he made no connection with Mr. Tomley on that occasion.

Q. Let me ask you this. Did you hear his conversation? Were you where you could hear Wright's part of the conversation?

A. Yes, sir.

Q. Did he say anything when he talked to the desk at the hotel about wanting to talk to Wright about some motors?

A. The only thing he did was ask for Mr. Joe Tomley and he later hung up. We were with Mr. Wright for some time. We went over to Robins Air Force

Base at that time and went into the Base Security Office on the Base, and later, between that time and eight or eight fifteen two efforts were made to contact Mr. Tomley at the Central Hotel by Wright from the telephone on the Base, at which time I was listening in on an extension telephone. On the second call from Robins Air Force Base the call was put thru at the Central Hotel when he asked to speak to Mr. Tomley. A room was rung by the hotel and a woman answered the telephone and said "Hello", and Wright asked if Mr. Tomley was there, and the woman said no, said "Who is this", and he said, "This is Wright at Warner Robins. I want to speak to Joe", and she said, "He's not here". Wright then stated, "Well, tell Joe I've got some more stuff for him", to which the woman replied, "Joe said to tell you to bury whatever you have got and he'll contact you later."

Q. Did you hear that?

A. Yes, sir, I was listening in on the extension.

Cross Examination.

By Mr. Miller:

Q. Mr. Powell, did you ascertain how long Mr. Wright had had these four motors in his car that he had when he was picked up for driving under the influence of intoxicants?

A. No, sir, I did not.

Q. You weren't concerned with how long he had had them? I mean you didn't ascertain that, whether you were concerned or not?

A. Only what he said.

Q. What did he say?

A. That he had taken them over a period of several days.

Q. Those four I'm talking about?

A. Those four, he was bringing them off that day.

Q. Did he tell you that?

A. It's my understanding that's what he said, that he had brought those motors from the base on that date.

Q. All right what about the 24 at his house, how long had he had those?

A. Only thing he said was that he had brought them off over a period of several days.

Q. You didn't put it any more definite than that?

A. No, sir.

Q. What time of day did you—let me ask you this though. What was the purpose of having Wright to call Mr. Tomley with you listening in?

A. My purpose was to try to see if Mr. Tomley would accept delivery of the materiel.

Q. You were trying to, what you might call, set a trap for him, catch him well and good with the evidence?

A. That's right, yes, sir.

Q. That's what it boils down to?

A. That's right.

Q. But you weren't successful?

A. No, sir.

Q. And the first time that you put Wright up to calling, what time was that?

A. As I recall, Mr. Miller, it was right at six o'clock, a few minutes before or a few minutes after.

Q. And that was the only call that was made from the Victory Drug Store, and the balance were made from Warner Robins Base, or some office there? The O. S. I.?

A. It was the Base Security Office, not the O. S. I.

Q. What's the difference in the two?

A. Well, O. S. I., as I understand it is the office of special investigations on the Base. The Base Security Office is charged with the security of the Base itself, under the Provost Marshal.

Q. Well now, O. S. I., are they military personnel or civilian?

A. I think they have some of both.

Q. And Base Security, they have some of both too?

A. They have some of both, yes, sir.

Q. All right, sir, what time was the second call made would you say?

A. I would think it was right close to 6:45 to 7:00.

Q. The third one?

A. Right at eight o'clock.

Q. Fourth one?

A. We only made three.

Q. That's the one when you heard Wright talk with the lady?

A. That's correct, sir, the last one.

Q. Now let's talk a little bit about the lady, please, sir. I believe you were in the company of Mr. Crutchfield from the O.S.I. or the Base Security out at Warner Robins on the afternoon of May 8 when Mrs. Turner, whom I understand this lady was, was asked by you or by Mr. Crutchfield in your presence, to come on, you wanted to talk with her?

A. No, sir.

Q. Were you in the room of Mrs. Turner at any time?

A. Now you asked me on May 8, Mr. Miller. That was the day before this started. I don't know whether you intended to ask me the 9th or not?

Q. Well I thought it was the 8th, but whatever date it was?

A. It was the 9th.

Q. Were you ever in Mrs. Turner's room?

A. On the night of May 9, yes, sir.

Q. Well Tomley was arrested then on the 10th?

A. That's correct, yes, sir.

Q. The night of May 9 what time were you in the room with Mrs. Turner?

A. We got there about nine o'clock, I think it was.

Q. And who is "we"?

A. Mr. Crutchfield was with me, and Mr. Peterson and Mr. Beverstein were also there.

Q. Who are Peterson and Beverstein?

A. FBI Agents.

Q. Do you have such things as lady FBI agents?

A. No, sir.

Q. No females?

A. No, sir.

Q. What do you call a female FBI agent?

A. I've never seen one. I don't know, sir.

Q. Never seen one? If you were to see one it would have to be a man in ladies clothing?

A. You asked me if they had lady agents. I've never seen one.

Q. Four of you men go and knock on this lady's hotel room door at eight o'clock at night or nine?

A. Nine I think would be more correct.

Q. You did not announce in advance that you were coming?

A. No, sir.

Q. You do not have a warrant for her arrest or a search warrant?

A. No, sir.

Q. And you knock and open the door and find her in her negligee, or night gown, or whatever ladies call them?

A. I believe she had been in bed, yes, sir.

Q. And when she opens the door in goes your foot?

A. No, sir.

Q. You didn't stick your foot in the door?

A. No, sir.

Q. Did anybody else in your presence?

A. No, sir, it wasn't necessary. She came to the door and opened it and talked with us.

Q. I'm talking about after the door was open. I'm not asking before it was open.

A. No, we went in.

Q. But you didn't stick your foot in the door, or anybody in your presence?

A. No, sir.

Q. Very well. Then you went in and who did the talking, you, Peterson, Beverstein or Crutchfield?

A. I think I did most of the talking.

Q. And did you request her to come with you?

A. No, sir.

Q. Did anybody request that she leave the room?

A. At that time?

Q. Yes, sir.

A. No, sir.

Q. What did happen there?

A. I identified myself to Mrs. Turner and told her who we were. Actually, prior to the time that we went to Mrs. Turner's room we had gone to Mr. Tomley's room and knocked on the door and got no reply, and we knocked on the door at Mrs. Turner's room and she came to the door, and I identified myself to her, and told her we would like to talk with her for a minute, and she told us to come in and we went into her room and I—

Q. Let me interrupt you please. When you were talking with her could she see the other three men

out there or were they behind the door where she would get the impression that she was talking to only one man?

A. No, sir, they were right there in the hall.

Q. She couldn't see thru the door?

A. I don't know.

Q. To be fair about it the only person she could see when she invited you in was yourself?

A. No, I wouldn't think so. We were all right there together in the hall way, and after we got in and had identified ourselves to Mrs. Turner I asked her about the telephone call, if she was the one that had talked to Wright, and she stated that she was, and I asked her if she answered Mr. Tomley's telephone and she told us that the call was put into her room and she answered the call. I then asked her if she objected to us—if she did business with Mr. Tomley and she told us about the C. T. Sales Corporation, that she was a part of it.

Q. Did she inform you she was the secretary?

A. Yes, sir.

Q. And did you ask for permission to unlock the door and look in Mr. Tomley's room?

A. I asked her if the door was locked. The door was locked. She said it was locked. We didn't open the door.

Q. You didn't unlock it and look in there?

A. No, sir. The light was on in his room. The door was locked between the rooms and we didn't go in there.

Q. Did any of you go into his room at that time?

A. No, sir.

Q. Go ahead.

A. We asked her if she maintained the papers for the C. T. Sales of Mr. Tomley, and she told us that

she had some papers there that belonged to Mr. Tomley and I asked her if she objected to us looking at them and she told us no, and we looked at several papers that she had there. I think that took until pretty close to ten o'clock, Mr. Miller, and we then asked Mrs. Turner if she would object to coming over to the post office with Mr. Peterson and Mr. Beverstein, I believe it was, or Mr. Peterson and Mr. Crutchfield, and talking at the office, and she stated that she did not, and she came over with them.

Q. Who did she come to the post office building with, sir?

A. As I recall it, Mr. Miller, it was Mr. Peterson and Mr. Crutchfield.

Q. You didn't accompany them?

A. No, sir, I didn't come over here. I stayed at the hotel.

Q. And you can't say whether or not it was solely Mr. Crutchfield?

A. It was either Peterson and Crutchfield or Peterson and Beverstein.

Q. You wouldn't leave Crutchfield, who is not an FBI agent, with her by himself?

A. There were two of them together, and one was an FBI agent I'm sure.

Q. You feel positive?

A. Yes, sir, I'm sure.

Q. Those are your instructions?

A. I would have no hesitation in leaving Mr. Crutchfield with Mrs. Turner by himself, or with anyone else.

Q. All right, sir, now when she agreed to come over to the post office building she informed you fellows that she was working, I believe, at night down here at the Southeastern Greyhound Bus Station, and she would have to be there at a certain time?

A. Said she was supposed to go to work in the neighborhood of midnight.

Q. And she was assured that if she would come over here she would be thru in time to get there on time?

A. I told Mr. Peterson that if he did not finish in time for him to call the bus station or to let her call:

Q. I'm not asking what you informed Mr. Peterson. I'm asking what you informed Mrs. Turner. Did you not inform her that she would be thru with her conference in time to make her job?

A. I told her we would try to be thru, yes, sir.

Q. You didn't tell her you would be thru? Told her you would try to be thru?

A. That's my recollection, yes, sir.

Q. Do you know whether or not she was kept over here until after the hour to go to work?

A. Yes, sir, she was.

Q. But you were not present?

A. I was not, no, sir.

Q. Now you saw Mr. Tomley about midnight that night, I believe, in the Macon Hotel?

A. I saw Mr. Tomley between eleven and midnight, yes, sir. I might have seen him after midnight.

Q. You didn't arrest him then?

A. No, sir.

Q. Did you have your warrant for his arrest then?

A. Not in my possession, no, sir.

Q. Had it been issued?

A. There was one outstanding, yes, sir.

Q. Who had it?

A. The United States Marshal had it.

Q. When was he arrested?

A. On May 10, the following day.

Q. What time?

A. Shortly after noon.

Q. Who arrested him?

A. I did.

Q. Why did you arrest him? Why didn't you, I mean, at twelve that night, because you didn't have a warrant?

A. No, sir. No, sir, I was waiting for him to go back to his room.

Q. You wanted him to go back to his room to arrest him?

A. Yes, sir.

Q. And the purpose of that sir?

A. So I could see what he had in his room

Q. I see, and you did that about noon the next day?

A. That's right, yes, sir.

Q. And you never had been in his room before noon the next day?

A. No, sir.

Q. The 10th of May?

A. That's right.

Q. You didn't stick your head in there to see if he was in there with the light on the night before?

A. No, sir.

Q. But you say the light was on in there?

A. The light was on in his room, yes, sir.

Q. Did you have a warrant with you then?

A. No, sir.

Q. Well, can you tell me, Mr. Powell, why it took four of you burly men to go to a lady's room in the hotel to escort her out?

A. Well, we didn't go there to escort her out, Mr. Miller. We went there after Mr. Tomley. He wasn't there, and we stopped there to talk to Mrs. Turner.

and she was not escorted out by the four. Two of us stayed there.

Q. Four of you didn't walk thru the lobby with her?

A. As I recall it two of us stayed in the hotel. Now we all might have gone back down to the lobby at that time, and—

Q. And went on the outside and maybe two came back later?

A. That could be, yes, sir.

Q. Do you know what time Mrs. Turner was permitted to leave the post office building?

A. Off hand I don't, Mr. Miller.

Q. Well, she was not under arrest was she?

A. No, sir.

Q. The only thing you wanted to do was to interrogate her?

A. That's right.

Q. And why did she have to be brought to the post office building, why couldn't she have been interrogated right there in her room?

A. She could have been.

Q. But you preferred to make her dress and come over here?

A. We didn't make her dress. We asked her if she would mind coming over here.

Q. I mean you preferred to have her over here for some reason or other?

A. That's right.

(Witness excused.)

Mr. Buford:

Your Honor, we would like to introduce Government Exhibits 7 through 14. If Mr. Miller wants me to call them out one by one I'll be glad to do it.

Mr. Miller:

Let me look at the list please, sir. (After examining them.) We have no objections to them, Your Honor.

Mr. Buford:

We have already tendered, as I understand it, the first six and they have been admitted, and now we want to tender 7 through 14; that will be all 14 of our exhibits.

By the Court:

They are all admitted without objection.

Mr. Buford:

The Government closes.

MRS. MABEL T. TURNER, being called as a witness by the defendant, testified as follows:

Direct Examination.

By Mr. Miller:

Q. You are Mrs. what Turner?

A. Mabel T. Turner.

Q. Mrs. Turner are you employed by Southeastern Greyhound Lines?

A. I am.

Q. In what capacity?

A. At the present time I am ticket agent.

Q. How long have you been employed by them?

A. Approximately going on 15 years.

Q. Has all of that tenure of service been in Macon?

A. No, sir. Been in Macon about five years. Other part in Chattanooga.

Q. Did you make the acquaintance of Mr. Joe Tomley here at the Central Hotel?

A. Yes, sir, I did.

Q. Were you living there at the Central Hotel and did he move in there when he came here, or shortly after he came here?

A. Yes, sir.

Q. Did you all develop some sort of friendship?

A. Well, yes, sir, we got acquainted and I had known Mr. Tomley, I guess, just speaking acquaintance with him, for possibly about two months before I ever talked to him very much.

Q. Well now, did you have anything to do with Mr. Tomley's business of any nature prior to the forming of C. T. Sales Company?

A. I did not.

Q. And upon the forming of the C. T. Sales Company did you become affiliated with the company in any capacity, and if so what was it?

A. Yes, sir, I did. I became their official secretary.

Q. Did you own one share of stock?

A. I do.

Q. Well, coming down to the date of this thing right fast, we've been here a long time and I'll shorten it. Do you recall the day that Mr. Tomley was arrested concerning this investigation in this case?

A. No, sir, I couldn't say right off the definite date.

Q. I don't mean the date, but do you recall he was arrested?

A. Yes, sir, I do.

Q. The night before his arrest did you go out to dinner with him or did you happen to be in the lobby with him when he got instructions concerning a phone call that had been placed there for him?

A. Yes, sir, we had the company meeting that night and we went out to dinner, and Mr. Anderson and I went back to the hotel. Mr. Tomley and Mr. Colt had some business to attend to.

Q. Who is Mr. Anderson?

A. That's the other partner in C. T. Sales.

Q. All right. You and Mr. Anderson came back to the hotel?

A. Mr. Anderson went to the Macon where he lives, and I went to the Central. When I went back they said there had been a phone call for Mr. Tomley and asked if I knew where he was. I said yes, he was at the doctor's office and would be back in a little while. So the phone call came back again and Mr. Tomley didn't accept the telephone call.

Q. Well now, who was the person that stated that the call had come in?

A. The Clerk at the desk and one of the porters.

Q. Did they state who the call was from?

A. Yes, sir, said it was from Mr. Wright.

Q. Say anything else that you recall?

A. Not at that time, I don't.

Q. Later on what happened?

A. Mr. Tomley was going out again and he told me, he said if a call comes in will you accept it because I do not wish to talk with Mr. Wright. So I told the man at the desk as I was going up to my room before I went to work—

Q. Was anything said about any motors?

A. Well, to the best of my knowledge, I don't remember whether it was motors or what it was, but it was some merchandise for sale.

Q. Now who gave that information?

A. He gave it over the telephone.

Q. I mean how did you get it?

A. When I accepted the telephone call, I was supposed to be talking to Mr. Wright.

Q. Well now, did Mr. Tomley instruct you to take the call?

A. Mr. Tomley told me to take the call and tell the boy he didn't care to see him and didn't want to see him and didn't want to talk to him.

Q. And did you take the call?

A. I did sir.

Q. And did the man identify himself with whom you talked, by giving a name?

A. He said he was Mr. Wright, yes, sir.

Q. And what did he say? Did he say he had any —what did he say?

A. Well word for word I couldn't tell you what he said because it doesn't register with me now.

Q. What did you tell him?

A. Well, in my own wording, I didn't word it like Mr. Tomley told me, but to try to throw the boy off the track, to keep him from molesting Mr. Tomley or calling back, I told him Mr. Tomley didn't want to see him, he didn't want anything he had for sale, that all he wanted was what he legitimately bought off of that field, and if he had anything to just take it and bury it, because it was a dead issue, that he did not want it.

Q. All right now, what did Mr. Tomley tell you to tell Mr. Wright when you talked with him.

A. He just told me to tell Mr. Wright that he didn't want to see him, didn't want to talk with him, didn't want to have anything at all to do with him, and the way I worded it it was my own wording, my own interpretation.

Q. Where did you get this business of burying it?

A. Well, I don't know. It's just something that struck me in my mind, because it was something that, as far as I was concerned, that nobody wanted.

Q. Did anybody come into your hotel room the night before Mr. Tomley was arrested?

A. Yes, sir, they did, sir. Some one knocked at the door and I didn't know whether it was some of the guests in the hotel, which we frequently visit in one another's rooms. I went to the door and opened it. When I did it was Mr. Powell, and he asked me could he come in and look around. I thought he wanted to come into my room. He asked me if Mr. Tomley was there. I told him he wasn't. He said "Can I come in and look around". I said "You may". I opened the door thinking he was coming in just to look to see if Mr. Tomley was in my room.

Q. Well, now, when you opened the door how many did you see besides Mr. Powell, the first time?

A. Well, I saw one other gentleman with him, standing outside of the door. I could just see the shadow.

Q. And when you told him he could come in how many came in?

A. Four.

Q. Did anybody stick their foot in the door?

A. Mister—I guess it was Mr. Powell's foot that was in the door to keep me from closing it. He said I couldn't close the door. I told him to wait until I got my house coat and shoes on.

Q. Had you been in bed?

A. Yes, sir, asleep.

Q. And he came in, and what did he want. Who was the spokesman of the four?

A. Well, Mr. Powell was the one did most of the talking. Mr. Powell walked in, all three started

searching my room from top to bottom. Of course, I didn't think to ask if they had a search warrant because I had nothing that I cared for anybody seeing or nothing.

Q. Did they go in Mr. Tomley's room?

A. First Mr. Powell asked me why I took the phone call. I started to explain to him and he said, "Well, you weren't talking to Mr. Wright. You were talking to me." I said, "Well, I didn't know who I was talking to. "He said he was Mr. Wright and I thought it was Mr. Wright, but I was informed by Mr. Powell that it was Mr. Powell I was talking to. So during the time they were going thru my room he asked me then would I come over to the post office building and talk to them. I told him I would if they would let me back in time to go to work. He said they would.

Q. Who did?

A. Mr. Powell. So I thought I was coming to the post office to talk to Mr. Powell, but I didn't come with Mr. Powell. I came with two other gentlemen.

Q. Who were they?

A. Well, the names now I couldn't tell you but one of them. One of them was one of the boys from the field, Mr. Crutchfield. I remembered that name but I didn't remember the other. So they did delay me from my work and I did not go in time and I had to call, which we are required to call an hour before our work schedule if we are not going to be on duty.

Q. Were you late?

A. Yes, sir.

Q. Did you ask them while you were there to let you leave and get there on time?

A. I did sir, and I finally had to ask them to let me use the phone and call in and tell them I would be there late.

Q. Among the two talking here in the building, who was the spokesman, Crutchfield or the other fellow?

A. Well, one was doing as much talking as the other.

Q. Did they accuse you of with-holding information?

A. They did, sir.

Q. Did they tell you that you were about to get yourself in trouble?

A. They did.

Q. What did you tell them about that?

A. I told them I had told them all I knew, that I didn't know anything to tell them, and I had been honest with them.

Cross Examination.

By Mr. Evans:

Q. How well did you know Mr. Andrew Jackson Wright?

A. I didn't know Mr. Wright too well, just on seeing him, sir?

Q. How many times had you been to his home?

A. One time.

Q. How many times had he been up to Mr. Tomley's hotel room?

A. I couldn't say that, sir, because I don't know.

Q. You ever see him up there?

A. I never did see him up there.

Q. He never did call you over the telephone looking for Mr. Tomley, did he?

A. No, sir. That's my first time to talk to him, is that night.

Q. So you have just been exposed to him seeing him one time out at his home?

A. That's all, sir. I saw him a few times on the street but I didn't know who he was.

Q. This letter that they picked up in your room with Mr. Wright's name on it and his address, Govt. Ex. No. 13, how did that happen to be there?

A. Sir, I couldn't say because I don't know. It's like I said I have the minute books and I have some of the things that were in my room, and I couldn't tell you why, if it was in my room.

Q. Well, if it was in your room could it have been in there to send him a Christmas card by?

A. I wouldn't know sir. I wouldn't think so. I had some addresses in my room that I did send some Christmas cards for Mr. Tomley, and some packages.

Q. Was that one of them?

A. I won't say. I don't remember, don't remember it at all.

Q. Where was this letter in your room?

A. I don't know because I don't remember the letter.

Q. You don't remember it having been in your room?

A. No, sir, I don't remember the letter at all.

Q. Now that night when they called, I believe you say that before they called that Mr. Tomley had told you to take the call?

A. That's correct, sir.

Q. And I believe you said that evening that you and Mr. Tomley and Mr. Clot and Mr. Anderson all went out to dinner?

A. That's right, sir.

Q. Where did you all have dinner?

A. Lanier Hotel.

Q. And what time did you finish with your dinner?

A. Sir, I couldn't say. Somewhere between the hour of six and seven o'clock.

Q. Did you leave your hotel before six or do you know?

A. No, sir, I didn't. I sleep in the day time and I work at night.

Q. Did Mr. Tomley come by the hotel and get you at your hotel?

A. Yes, sir, he did.

Q. And you all went from there on to the Lanier?

A. Yes, sir.

Q. Do you know what time you left your hotel, you and Mr. Tomley?

A. No, sir, I do not.

Q. Sometime around six o'clock?

A. In the neighborhood of the hour.

Q. Now was anything said before you left the hotel about this man Wright trying to get in touch with Mr. Tomley?

A. No, sir, there wasn't.

Q. And then you went back to the hotel and it was then that they said that Wright had been trying to get in touch with Tomley?

A. Yes, sir.

Q. Now what was said at that time about Wright trying to get in touch with Tomley?

A. Nothing sir that I can remember, except Mr. Tomley just asked me—I told him I was going up and lay down before I went to work and he asked me, said "If the call come back in will you tell Mr. Wright I don't care to see him and I don't want to talk to him," and it was merely, I thought, taking the call to throw Mr. Wright off, to keep him from molesting Mr. Tomley any further.

Q. Did you hear the person at the desk tell Mr. Tomley that Mr. Wright had been trying to get him?

A. No, sir, I did not.

Q. And the first you knew about it was when Mr. Tomley told you?

A. The porter came outside and asked me where Mr. Tomley was and I told him he was at the doctor's office and he said there was a telephone call for him.

Q. When was that?

A. After I went back to the hotel, while I was sitting out in front.

Q. Said Mr. Tomley had gone to the doctor's office?

A. That's correct, sir.

Q. What doctor?

A. I don't know the doctor's name. He was going for a physical check-up for some insurance.

Q. That same night?

A. Yes, sir.

Q. I thought they had a company meeting?

A. We did have.

Q. At dinner?

A. While we had dinner, yes, sir.

Q. And then after that I understood Mr. Clot and Mr. Tomley had some business to transact?

A. That was going to the doctor for their physical check-up for insurance.

Q. Each one of them went to the doctor?

A. They both went together, sir.

Q. About what time was it that the telephone call came in that you answered?

A. Sir, I couldn't say right off because I don't know.

Q. Were you asleep at the time it came in?

A. Yes, sir, I was.

Q. Was that around eight o'clock?

A. Well, I would say it was in the neighborhood of maybe around eight or eight thirty, somewhere

along there. I wouldn't say right off the hour because I don't remember.

Q. And now just what was it that Mr. Wright said to you when he called over the phone, or Mr. Powell, or whoever you say it was?

A. Sir, I couldn't say word for word because I don't remember the conversation.

Q. Did he ask for Mr. Tomley?

A. Yes, sir he did.

Q. And what did you tell him?

A. I told him Mr. Tomley was out.

Q. And then what did he say to you?

A. He said he was Mr. Wright and said he wanted to see Mr. Tomley, that he had some merchandise for sale.

Q. Did he mention motors?

A. I won't say whether motors or what, but he did mention some materiel of some kind, because I don't know a motor from anything else.

Q. Yes, mam, and what did you tell him?

A. I told him that Mr. Tomley didn't want to see him, didn't want to talk to him, didn't want anything he had, and that was my own interpretation in talking to him.

Q. And what else did you tell him?

A. Sir, I couldn't say word for word. I don't remember just exactly how I worded it.

Q. Did you tell him to take the stuff and bury it?

A. I think I did sir, but that was my own way of wording it. I wasn't told to tell him that.

Q. Did you tell him to take the stuff and bury it, that Mr. Tomley would contact him later?

A. I said Mr. Tomley will see you later, and that was my interpretation of throwing the boy off to keep him from molesting him.

Q. Now you were before the grand jury, weren't you, Mrs. Turner, before the grand jury here?

A. Yes, sir, I was.

Q. And you denied the use of the word "bury" altogether when you were before the grand jury, didn't you?

A. I don't remember.

Q. Up there the same question was put to you as is being put now, didn't you use the word "bury", and you denied it very strongly, said you never used that word?

A. I don't think that I did, sir.

Q. Well, which is right? Did you use the word "bury" or not?

A. I don't know for sure what I did. I said I didn't remember word for word, but it seems that I used something to that wording. I couldn't say for sure that I did or didn't.

Q. Now one other thing I want to talk about. That morning that Mr. Tomley was arrested, did you receive a registered or special delivery letter at the Central Hotel from his sister, Miss Ann Tomley, up in Ambridge, Pennsylvania?

A. Sir, I received a letter but I won't say whether it was registered or air mail or what it was because I never did look at the address on the letter.

Q. How did that letter happen to come to you?

A. That was some of Mr. Tomley's personal mail and he sent it to me. I was supposed to have gotten the letter for him and it seems it was delayed in mailing or something.

Q. Tell me a little bit more about it. Did you know it was his personal letter?

A. He just asked me if I had received the letter, that he had a personal letter that he mailed to me because he wasn't in town.

Q. That he mailed to you?
A. He was having mailed to me.
Q. That he was having mailed to you?
A. Yes, sir.
Q. Where from?
A. He said from, his sister was mailing it in Pennsylvania.
Q. Mailing it to you? Is that correct?
A. That's correct, sir.
Q. Was the letter addressed to you?
A. Yes, sir, it was.
Q. Well now, if Mr. Tomley said he addressed a letter to himself in his own handwriting, he must be talking about a different letter, mustn't he?
A. Sir there could have been another letter inside of that letter for all I know. I never did open the letter.
Q. I see. Now when did you get that letter?
A. Well, it was sometime along the time that they arrested Mr. Tomley. I don't know what hour of the day it was. It was when I came down stairs.
Q. When you came down from your room you hadn't seen Mr. Tomley that morning had you?
A. No, sir, I hadn't.
Q. Same day he got arrested we are talking about.
A. That's correct, sir.
Q. You came down and who gave you the letter?
A. The letter was handed to me at the desk sir.
Q. Who gave it to you?
A. Mrs. Logue.
Q. Pardon?
A. Mrs. Logue, the lady at the desk.
Q. And you took the letter and what did you do with it?
A. Sir, I don't know I misplaced that letter somewhere, because thru the excitement and being up all

night—I had not slept any that day, and I was going to the hairdressers and I lost it somewhere. Where, I do not know.

Q. Where was the letter postmarked?

A. I couldn't say I never did even look at the envelope.

Q. You know whether it was special delivery air mail or not?

A. I do not, sir.

Q. How many stamps did it have on it?

A. I don't know. I never looked at it.

Q. Did it look important?

A. I told you I didn't look at it.

Q. And you just lost it?

A. That's right, sir.

Q. Anybody ever return it to you?

A. No, sir, it hasn't.

Re-Direct.

By Mr. Miller:

Q. Just a minute, Mrs. Turner. When Mr. Powell or these agents were talking with you with respect to what you told Mr. Wright over the phone, did Mr. Powell ask you if what you told Mr. Wright were the same words that Mr. Tomley had instructed you to give him? Did they go into that?

A. Sir, I just don't remember. It seemed that he asked me if that was what Mr. Tomley told me to tell him, and I told him that was my way of wording it.

Q. Looking at Govt. Ex. 13 here, you were reading the typewritten part on the front, I think. I think the meat, so to speak, of the exhibit for the Government, is what is on the back. Can you tell me whose hand-

writing that longhand is, any of it? Did you write any of that?

A. No, sir, I didn't. I couldn't tell you a thing about it, sir. I don't remember even seeing the letter before.

Q. You don't know whether it came from your room or not?

A. No, sir. It could have been in the minute book and just got in my room, because I do have the minute book and the seal in my room at all times.

(Witness excused.)

The Evidence Closed.

REQUEST TO CHARGE

(Title Omitted.)

Comes now the defendant in the above-styled matter, and, subject to his motions for acquittal and without waiving his request to charge heretofore submitted, pertaining to what defendant contends is the law of the case with respect to corroboration of testimony of an accomplice and other matters set forth in such prior request, requests the Court to charge the jury as follows, being submitted herewith prior to the commencement of the charge of the Court to the jury, each numbered request being a separate and distinct request:

As to All Counts.

1.

The Government contends that Andrew Jackson Wright is an accomplice of the defendant in this case. With respect to this contention of the Government, I charge you that the testimony of A. J. Wright is to be received by you with extreme caution and scrutinized with great care and suspicion in arriving at your verdict.

239 Fed. 16.

198 Fed. (2d) 3.

3 Dill. 581.

7 Biss 175.

2.

Further, in connection with the contention of the Government that A. J. Wright was an accomplice of the defendant, I charge you that you would not be authorized to convict the defendant on the testimony of Wright alone, unless you find and determine that Wright's testimony produced the fullest and most positive conviction of the truth, and from Wright's testimony you are satisfied to a moral and reasonable certainty, and beyond a reasonable doubt, of the guilt of the defendant.

3.

I charge you that an accomplice is a competent witness; but unless the testimony of an accomplice is corroborated, a jury should rarely, on the testimony of an accomplice alone, convict a defendant, unless the jury, after receiving and weighing the testimony of an accomplice with extreme caution and scrutinizing it with great care and suspicion, concludes that the accomplice's testimony produces the fullest and most positive conviction of the truth, and are satisfied to a moral and reasonable certainty, and beyond a reasonable doubt, that the defendant on trial is guilty.

3 McLean 224.

5.

I charge you that in cases where an accomplice testifies against a defendant on trial, a jury should not place too much reliance on the testimony of an accomplice, unless the jury finds that the testimony of an accomplice has been corroborated by other evidence, separate and independent of the evidence given by the accomplice.

217 U. S. 509.

167 Fed. (2d) 454.

6.

I charge you that in Federal Courts there is no hard and fast rule requiring the corroboration of an

accomplice before a jury is authorized to convict a defendant on the testimony of an accomplice. However, Federal Courts recognize it is well for the Judge to call to the attention of the jury the frequently untrustworthy character of such evidence, and for the Judge to suggest that the jury should scrutinize the testimony of an accomplice with caution and not accept it unless it so far harmonizes with the other testimony in the case as to leave in the jury's minds no reasonable doubt of the truth of the testimony of the accomplice.

L. EUGENE JESSUP,
MILLER, MILLER &
MILLER,
By WALLACE MILLER, JR.,
Attorneys for Defendant,
Joseph Tomley.

REQUEST TO CHARGE.

(Title Omitted.)

Comes now the defendant in the above-styled matter, and, before the charge of the Court to the jury is begun, submits his following requests to charge, each numbered request being a separate and distinct request:

As to All Counts.

1.

I charge you that any arrangement that you find the defendant might have had with Mr. A. J. Wright

whereby Mr. Wright was to inform the defendant when certain items of merchandise were to be moved or placed for sale by Warner Robins Air Materiel Area, Surplus Department, could not be considered by you in this case as unlawful, and you would not be authorized to convict the defendant of any such arrangement; any such arrangement would not violate any criminal law that might be involved in this case.

2.

I charge you that before you would be authorized to find the defendant guilty of any count in the indictment you must be satisfied to a moral and reasonable certainty, and beyond a reasonable doubt, that the defendant committed the acts charged against him, and intended by such acts to defraud the United States of America.

14.

I charge you that every knowing conversion of property is not stealing, and that there might be a knowing conversion of property without intent to defraud. A knowing conversion without intent to defraud is not a crime. Conversion of property may include misuse or abuse of property.

In this connection, I charge you that if you find the defendant came into possession of the property involved knowing he was unauthorized to have possession of the property, but so came into possession of the property without criminal intent to defraud the United States Government, and thereafter disposed of

some of it, if he did dispose of it, without intent to defraud the United States Government, then I charge you that he committed no crime, and his conviction would not be authorized.

Morrissette vs. U. S., 342 U.S. 246 (1).

L. EUGENE JESSUP,
MILLER, MILLER &
MILLER,
By WALLACE MILLER, JR.,
Attorneys for Defendant
Joseph Tomley.

CARGE OF THE COURT.

Members of the Jury, as you know, this indictment was returned by the Grand Jury against two defendants, Joseph Tomley and Andrew Jackson Wright. There is on trial at this time only one defendant and that is Joseph Tomley. Therefore, you are not concerned in this case with the question of the guilt or innocence of the other defendant, Andrew Jackson Wright. That is to say, you are not called upon to return any verdict finding one way or the other with reference to his guilt or innocence. You will not consider the fact that he has entered a plea of guilty in this case as evidence. It is a part of the pleadings but it is not evidence against the defendant on trial. Of course, as I shall instruct you later, you will consider his evidence, his testimony from the witness stand, what I just said to you relating to the fact that he has entered a plea.

The indictment itself is not evidence. It is simply the instrument through which the Grand Jury presents the charges made in the indictment, and the indictment on the one hand and the plea of not guilty entered by Mr. Tomley on the other form the issue of fact, the question which this jury is to answer by its verdict.

The word "verdict" comes from a Latin word which means "truth", and you are in the box here, and have been this week, simply to determine what the truth of this matter is, and to express the truth of the matter by the verdict which you shall return. The indictment will go out with you and you may look at it for a detailed statement of the issues in the case if you so desire.

It now remains my duty to give you the law applicable to this case to which you are to apply the facts as you find and believe them to be from the evidence which you have heard. It is appropriate that I say to you that it is upon this evidence and this evidence alone, when taken in connection with the law now being given you in charge, that you are to base your verdict. You should perform that duty calmly, deliberately and dispassionately under your conviction as jurors, laying aside all questions of bias, prejudice, affection, and all other human emotions and rest your verdict entirely upon the evidence and the law.

Counsel in the case can be of considerable help during the trial of the case in presenting the evidence, but they are through now and the rest of it is up to you. You are not to accept as the truth of the case what Counsel say to you in their arguments unless you think from your interpretation of the evidence that their conclusions about it are correct. You

take the law as stated by the Court. Whether it is correct or not, under our system you are to take that as being the law here. The Court rules the law and that is not open to question here, but you are the sole judges of the facts in the case. You are the sole judges of the weight of the evidence and the credibility of the witnesses. If the Court should express, or you think has intimated, any opinion with respect to the facts in the case you are not bound by it, and any such intimation would be accidental because I do not want to in the least degree invade the province of this jury, and I want left entirely within the province of the jury the questions of fact, all questions of fact, and the question of guilt or innocence in this case. That is your province.

As you have seen, there are some conflicts in the testimony, and therefore it is for you as the triors of the facts to weigh, compare and consider all of the testimony of all of the witnesses in the case, including the documentary evidence and the physical evidence, and determine where lies the truth of this disputed question of fact.

It is your duty, if you can, to reconcile the testimony of all of the witnesses so that all witnesses shall have spoken the truth and so that you would not have to impute perjury to any witness. If, however, you are unable so to reconcile the testimony you may then reject the testimony of such witness or such witnesses as you believe to be untrue or mistaken and give credence to the vidence you think most worthy of belief.

In weighing the testimony and credibility of the witnesses you may consider a great number of factors. Among other things you may consider the witness' manner and demeanor on the stand, the

witness' feelings in the case, the witness' interest or lack of interest in the case or in the outcome of the case, the witness' prejudice or bias, if any, the witness' means of knowing what the witness testifies about, the probability or improbability of the witness' testimony, the consistency or inconsistency of the witness' statements, his intelligence or lack of intelligence, the reasonableness or unreasonableness of the witness' testimony, and also the witness' personal credibility insofar as the same may legitimately appear upon the trial of this case.

The number of witnesses on any contested point may be considered, though the truth is not always with the greater number.

The defendant was entitled to take the stand as he had done and testify in this case. His testimony goes before you just as the testimony of any other witness in this case, to be weighed and considered by precisely the same rules as I have just outlined by which you are to weigh the testimony of all of the other witnesses in this case. The defendant's testimony as to matters involved is competent and material evidence. He is a witness in his own behalf and his testimony is to be taken and considered by you under the law as is being given you in charge by the Court the same as the testimony of any other witness, and measured by the same standards of measure.

For instance in measuring his testimony you would consider his manner and demeanor on the stand, his feelings, interest, prejudice or bias, if any, his means of knowing what he testifies about, the probability or improbability of his testimony, the consistency or inconsistency of his statements, his intelligence or lack of intelligence, the reasonableness or unreasonableness of his testimony, and also his personal

credibility so far as the same may legitimately appear upon the trial.

In determining the credit and credibility to be given by you to the testimony of Andrew Jackson Wright in this case you may consider his hope or expectation, if you think he has such, of leniency or benefit by virtue of his testifying for the Government in this case. You will recall his testimony to the general effect, as I recall it, that he believed it would help to tell the truth. You will recall all of his other testimony in weighing and appraising the credibility of that witness. The weight and credibility of the testimony of all witnesses is solely for the jury to determine in consideration of all of the circumstances involved, and in weighing his testimony you would consider all of these factors I have enumerated, including his manner and demeanor on the stand, his feelings, his interest, prejudice or bias, if any, his means of knowing what he testifies about, the probability or improbability of his testimony, the consistency or inconsistency of his statements, his intelligence or lack of it, the reasonableness or unreasonableness of his testimony, and also his personal credibility so far as it may legitimately appear upon the trial of the case.

I charge you in this connection that he is an alleged accomplice, and that you should in considering the testimony of an alleged accomplice, his testimony should be scanned with great care and received with great caution, and I charge you that the jury should consider all of the facts and circumstances in the case and if by reason of the fact that he is an accomplice you would not be willing to accept any part of his testimony, then you would be authorized to disregard it. On the other hand if you think under all of

the facts and circumstances of this particular case that what the alleged accomplice testified to was true, then you would be authorized to act on his evidence and to convict on it.

In this as in all other criminal cases we start upon the trial with the presumption that the defendant is innocent. That presumption is not evidence in favor of the defendant. It is simply a presumption which casts upon the United States the burden of proving the charge that it brings against the defendant, and it is the duty and the burden of the Government to prove this charge beyond a reasonable doubt. But if and when the Government has done so, then this presumption of innocence entirely disappears from the case, as it is the evidence that is to control on all questions.

By a reasonable doubt the Court does not mean a mere condition of vague conjecture or uncertainty in your mind, nor does a reasonable doubt consist of a mere possibility that the defendant may be innocent, but a reasonable doubt, just as the term implies, is a doubt that is based upon reason, based upon the evidence or lack of evidence in the case. If you have such a doubt as that you should give the defendant the benefit of the doubt and acquit him, as you should convict only if you believe him guilty beyond a reasonable doubt. A reasonable doubt is an honest, substantial doubt, actually existing in your minds and arising either from evidence favorable to the defendant or from want of evidence on behalf of the Government. It is not merely such a doubt as may be conjured up in the mind of one desirous of escaping the responsibility of a decision, or such as may be engendered by pity or sympathy for an accused.

In that connection I charge you that where, from any given transaction or set of circumstances, dif-

ferent inferences of guilt or innocence might be drawn, some favorable and some unfavorable to the accused, it is the duty of the jury to adopt the inference favorable to the accused under the circumstances.

I charge you that, in determining whether the defendant committed the acts charged against him in the various counts and whether he committed them with criminal intent, and from all the evidence different inferences might be drawn with respect to whether or not he committed the acts and the intention with which he committed the acts, that is to say if you find that from them different inferences may be drawn, some inferences favorable to the defendant and some unfavorable to the defendant, it would be your duty to adopt the inference drawn that is favorable to the defendant.

Some ultimate facts are not capable of proof by direct evidence but may be proved just as effectually by circumstantial evidence. The rule in a circumstantial evidence case is that the circumstances proved by the evidence must be sufficiently strong to exclude every other reasonable hypothesis except the guilt of the accused. The inferences reasonably to be drawn from the evidence must not only be consistent with the guilt of the accused but must be inconsistent with every other reasonable hypothesis of his innocence. Circumstantial evidence is evidence not of the ultimate fact but of other facts from which a reasonable conclusion may be drawn as to the existence of the ultimate fact. The rule where an ultimate fact depends entirely on circumstantial evidence is that the circumstances established by the evidence in the trial must be sufficient to exclude every other reasonable hypothesis except the guilt of the accused. This

does not mean that it must exclude every other possible hypothesis, or every fanciful hypothesis that might be made, but it means it must exclude every other hypothesis which is based on reason growing out of the evidence or the lack of it.

As I shall explain to you shortly, this is a conspiracy case and involves in general an alleged agreement between the defendants to violate the law. Such an agreement is most frequently provable only by circumstantial evidence, unless a party to the agreement testifies in Court. If a party to an agreement comes into Court and testifies that he had the agreement with the person, and if his testimony embraces all of the essential ingredients of a conspiracy, as I shall outline them to you, then such testimony would be direct and positive evidence and would not be circumstantial evidence.

Likewise, there are two counts in this indictment charging this defendant with receiving stolen property knowing that it was stolen. If an accomplice were to come into Court, or any witness, and say "I delivered stolen property to the defendant and I told him it was stolen", then that case would not depend upon circumstantial evidence but upon direct and positive testimony. But if an alleged accomplice were to come into Court and say, "I stole property and I delivered it to this defendant", and if such person were not to go further and say, "I told him it was stolen", then such case would depend upon circumstantial evidence as to that ingredient of knowledge of the stolen character of the property.

I am not intimating what the evidence was in this case. I could do so. In this Court I would be permitted to tell you what I think of the evidence, but I would not do so. I could do so under the law if I were to go

further and tell you that it is not what I think of it that controls you but what you think of it, but I follow the policy of not invading the province of the jury at all. I have responsibility enough in telling you what the law is and telling you what your duty is.

Some evidence has been introduced in this case to impeach a witness or witnesses. For instance, it was shown that one witness had served a three year term in the penitentiary. That evidence is admissible in this case only for the purpose, but properly for the purpose, of assisting you, if it does, in appraising the testimony of that witness. In other words, it is admitted solely for the purpose of your determining whether or not that witness is impeached or whether or not he should be believed by you. A witness may be impeached by disproving the facts testified to by him or her, or by his statements made in Court as to matters relevant and material to his testimony and the case which are contrary to such similar statements made out of Court, or by proving conviction of a felony. A witness is successfully impeached when the evidence satisfies the jury that he or she is not worthy of belief. Sometimes you hear a person say, "Oh, that witness was impeached". Well, nobody ever knows whether a witness is impeached or not except the jury, because a witness is never impeached unless the jury decide that they ought not to believe him, but if the jury does decide that they ought not to believe him then he is impeached; so nobody knows when or whether a witness is impeached except the jury, because you are the sole and exclusive judges as to the credibility of a witness. If you find that the evidence offered for the purpose of impeaching any witness in this case shows that he is not worthy of belief, that is has been successfully impeached, then you

will be justified in disregarding the testimony of such witness, except insofar as the testimony of such impeached witness has been corroborated by other creditable evidence. after all the credibility of the witnesses and the weight of the evidence are questions for your sole determination.

There is some evidence in this case of the good character of the defendant. I believe he testified that he has never been in any trouble. He testified that he never had been arrested until this case. Now it is a question for you gentlemen to decide whether or not he is a person of good character under the evidence in this case, and if you decide that he is a person of good character then the law applicable to that is as follows. That evidence is properly before the jury, not as a reason to acquit the defendant, if you think he is guilty, but to be considered along with all of the other testimony in the case in determining whether you think he is guilty or not.

Good character is a positive, substantive fact and may of itself be sufficient, if it is proven to exist, to generate in the minds of the jury a reasonable doubt as to the guilt of a defendant. If this jury should think, from all of the testimony together, that notwithstanding the evidence of good character the defendant nevertheless did what he is charged with doing then you ought to convict him. In other words a jury would not be authorized to acquit because of good character. The law contains no provision like that. But if the jury thinks the defendant actually committed the offense which he is charged with committing, whether he has good character or not, he ought to be convicted. But if he did not commit the offense with which he is charged, even though he may be a man of bad character in your judgment he ought to be

acquitted. As I say, the character evidence is to be considered along with all of the other testimony in the case in determining whether the defendant did what he is actually charged with doing.

This indictment in the first count is what is termed a conspiracy indictment. There are certain statutes of the United States which make certain specific acts crimes. Then in addition to all those statutes there is a statute which says that if two or more persons agree together that they will commit a crime against the United States and then do some act in pursuance of that agreement, that in itself is a crime separate and distinct from the specific crime which they agreed they would commit. That statute is intended to make criminal an agreement to commit a crime, if some act is done in pursuance of the agreement, whether the crime is ever actually committed or not. The substantive crime which they agreed they would do may never have been committed but Congress has made it a crime to agree to do it, if some overt act is committed in furtherance of the agreement.

Just to illustrate, and not on the same facts at all that we have in this case, if you and I decided, any one of you and I, that we would manufacture some liquor down here in the swamp, and then one of us, either one of us, went out here and bought some sugar for the purpose of putting up the beer, and then we stopped right there, just bought some sugar for that purpose and then quit without doing another thing, did not make any liquor at all, we are still both guilty of a criminal conspiracy, because a criminal conspiracy means, as I have stated, an understanding between two or more people—you must have two, you may have any larger number, two or more—that they are going to violate a criminal statute of the United

States, and one of them does some act in pursuance of that agreement.

In a conspiracy indictment there are two parts and both are essential to a conviction. The first is that there must be an agreement between two or more persons. One man can't agree with himself. There has to be at least two and maybe more. The offense consists of an agreement between two or more persons that they will violate a criminal statute of the United States. The second essential of a conspiracy indictment is that some one of the overt acts alleged in the indictment must have been committed by some one or more of the defendants who were parties to that agreement.

Now an agreement does not mean that two or more people have to get together around a table with any formality and outline specifically just what sort of an agreement they expect to enter into. The agreement doesn't have to be in writing. It doesn't have to be stated orally even. It doesn't have to be stated at all, but it must and does mean that if two or more people have a common understanding among themselves as to what they are going to do, whether something is not said about it even, that is an agreement within the contemplation of the criminal conspiracy statute of the United States.

To illustrate a little further, suppose that when we walk down out of this building we should see two men with guns rush into the bank and point their guns at the cashier and take the money out of the vault and run away with it, and that's all we know about that transaction. Well, you couldn't prove that they had got together and agreed, either in writing or orally, that they were going to rob a bank, but we would know that they were in it together, that they were

cooperating with each other, that they were acting in concert, and that therefore they understood between themselves what it was they were going to do. That is what an agreement means in connection with a conspiracy case.

When I use the word "agreement" I mean an agreement to violate the law as set out in this indictment. Of course there are a great many laws and a great many crimes under the various statutes and the conspiracy statute applies to an agreement to violate any criminal law of the United States no matter what it is. But this indictment says that these defendants agreed or had an understanding among themselves that they would violate the laws of the United States in certain respects set out here in the indictment. I charge you, therefore, that the agreement or understanding must be an agreement to violate the law in the respect set out in this indictment itself, that is in Count One, and in the long or first or charging part of Count One.

The first thing you will determine in this case is whether or not there was an agreement among or between two or more persons, and whether or not the defendant Joseph Tomley was a party to that agreement as alleged in the indictment. If there was no such understanding then you would just find a verdict of not guilty on Count One, because it is necessary that there should have been an agreement or an understanding to constitute a conspiracy.

If you find there was such an agreement or understanding among the defendants to violate the law as charged, then you will determine who were the parties to that agreement. Of course it could be alleged that a great number of people had an agreement or a common understanding that they were

going to violate the law, and then when the case is tried the evidence might show that that great number were not in the agreement but that some of them, some smaller number, were. You are not concerned with that in this particular case because the indictment here charges that these two men, Tomley and Wright, and other persons to the Grand Jurors unknown, entered into the agreement. So it would be possible for you to find that either Tomley and Wright agreed among themselves or that Wright was not a party to it but Tomley and some one else were, or you may decide that Tomley was not in it, and of course if you decide that you need go no further in this case as to Count One, because the only defendant on trial under Count One in this case is Joseph Tomley, so if he were not a party to an agreement you would have no further problem with respect to Count One, but if you find that there was an agreement and if you find that the defendant Joseph Tomley was a party to it, then the next thing you would do would be to go over to these overt acts named in the indictment and see whether, in your opinion, any one of them has been proved by the testimony in this case.

You will find that there are thirteen overt acts alleged and they are contained in numerical paragraphs running from 1 to 13. While a large number of overt acts are alleged here and are usually alleged in conspiracy indictments, it is not necessary for the Government to prove all of these overt acts. The statute says that the agreement to violate the law and a single overt act by any one of the parties to the agreement completes the offense as to all parties to the agreement. If you find that even though there was an agreement to violate the law, not a single one of these thirteen alleged overt acts set out was committed by anybody connected with the conspiracy

then you would find a verdict of not guilty, because, I repeat, it takes the agreement plus one overt act to complete the offense.

On the other hand, if you find that an agreement did exist and then you find that at least one overt act set out in the indictment was committed by at least one of the parties to that agreement, it need not be all, one being enough, that would complete the offense and you would find guilty all those who were parties to the agreement or understnading, but it happens that in this particular case you are dealing only with one defendant, and that is Tomley.

The overt act itself need not be a crime. For instance, in the illustration I used it was buying sugar. Buying sugar is not a crime, but if it is bought pursuant to a conspiracy it ripens the conspiracy and makes the agreement an unlawful agreement or an unlawful conspiracy.

Now coming to the particular offense charged in this case, I will read you the applicable code section. The statute contained in Sec. 641, Title 18 of the Code, says this: Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority sells, conveys or disposes of any money or thing of value of the United States or of any department or agency thereof, or whoever receives, conceals or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted, shall be dealt with as provided in the statute. And the statute says further, the word "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

Now this indictment, which, as I said, you can read throughout if you want to, charges in substance

that these two defendants Wright and Tomley, conspired among themselves and with other persons to the Grand Jurors unknown, and therefore unnamed, to do certain things, namely, to steal, purloin and knowingly convert to their own use, and without authority to sell, convey and dispose of property of the United States, to-wit: Scintilla breaker assemblies having platinum points thereon, American-Bosch breaker point springs having platinum points, motor gun chargers, sometimes described as motor timer guns, and aircraft spark plugs having platinum points, having a value of at least $6,800.00; and to receive, conceal, and retain such property with intent to convert it to their own use and gain, knowing that said property had been and would be so stolen, purloined and converted. And then follow the thirteen alleged overt acts.

And then there remain in the indictment for your consideration two counts, Count Two and Count Three. They are much shorter than the conspiracy count and they charge what we refer to as substantive offenses, which simply distinguishes them from the conspiracy count. In other words, they charge that this defendant Tomley violated this statute which I have just read you, whereas the conspiracy count charges that they jointly violated both the conspiracy statute and this statute.

Count two says that on a date named the defendant Tomley did unlawfully, wilfully, knowingly, and feloniously receive, conceal and retain, with intent to convert to his own use and to defraud the United States, 200 American-Bosch breaker point springs, having platinum points, the property of the United States, having a value of at least $350.00, with knowledge that said described property had theretofore been stolen and purloined.

Count Three has a similar charge against Mr. Tomley dealing with other property and with a different alleged value of $146.00.

You will see here a crime very similar, if not identical, with receiving stolen goods under the state law with knowledge that they were stolen property. In this case it happens that the allegation is that the property stolen was the property of the United States and that this defendant received it knowing it was stolen and knowing it was property of the United States. That's the reason it is in this Court rather than in the State Court.

Larceny is the unlawful, wrongful and fraudulent taking and carrying away by a person or the personal goods of another with intent to steal the same. "Purloining" is the word used in the statute and in the indictment, and it means essentially the same thing as larceny or stealing; that is, the unlawful, wrongful, fraudulent taking and carrying away by one person of the personal goods of another with intent to steal the same. And of course the offense of receiving such property means receiving property that has been stolen from the Government with knowledge of that situation.

With respect to Counts Two and Three, I charge you that if you find that Andrew Jackson Wright stole the property involved in these two counts from Warner Robins Air Base, as contended by the Government, and delivered such property to the defendant, this alone, if that is all you find, would not authorize you to find the defendant guilty under these two counts. You must further find beyond a reasonable doubt that this defendant received the property involved from Andrew Jackson Wright, and at the time he received it he knew that it was stolen from the United States

of America and that the defendant, with such knowledge, received the property with the intent to defraud the United States of America, for instance, by retaining it as his own or by selling it as his own.

I charge you that in all of the counts involved in this indictment, one, two and three, a necessary element of each offense charged in the counts is criminal intent on the part of the defendant to defraud the United States of America.

I charge you that if you find that property was sold to the defendant at the Warner Robins Air Materiel Area, Surplus Department, or any other department, by mistake or by negligence of the employees at Warner Robins, and even though you might find that such employees had no authority to sell the property, whereby the defendant might have come into possession of the property illegally so far as the civil law might be concerned, that is got it without getting a good title to it, this alone, if that is all you find, would not place the property in his hands whereby he would be violating any law in so receiving the property and selling it.

I charge you further, along the same line, that you would not be authorized to find the defendant Tomley guilty for bad judgment nor for bad practices simply because they might not be recognized or considered as good business practices, nor for simple maladministration or bad judgment, nor for any arbitrary exercise of discretion on his part. This is so because the law does not make criminal bad judgment, bad business practices, or arbitrary exercise of discretion, or maladministration of duties that are unmixed with criminal intent or intent to defraud.

In other words the essence of Counts Two and Three in this case is that the defendant Tomley received

property which had been stolen from the Government, and that he knew it at the time he received it; and, of course, if such are the facts he would be guilty. In this connection I charge you another principle of law, namely, the mere fact that a person is found in possession of stolen property, if you do find that the defendant was found in possession of stolen property—and that is a question exclusively for you—shortly after it was stolen, does not raise any presumption that he stole it, but it is a circumstance for you to consider along with all of the other circumstances with the idea of finding what the truth about it is. There is no presumption, I charge you, which arises from the mere possession of stolen property, but the law is that the possession of the fruits of a crime recently after its commission, in the absence of an explanation justifying the possession, warrants an inference pointing toward guilt, and that is the extent of it. It warrants an inference pointing toward guilt. Possession of goods recently stolen justifies an inference that the possessor has guilty knowledge of the theft, in the absence of explanatory facts and circumstances consistent with his innocence.

Members of the Jury, I believe that covers the principles of law as I see them applicable to this case. You will go to your room and address yourselves to the question of what your verdict should be. Inasmuch as you are trying only one defendant, you will fill in the name in this printed form of verdict at the foot or ~~the~~ back of the indictment, fill in the name "Joseph Tomley" and then after that put either "guilty" or "not guilty", this blank day of May, 1956, and let your foreman sign it and return it into Court. You are dealing with three counts, Counts One, Two and Three. Let your verdict specify what your verdict

is with reference to all three counts. For instance, it may be guilty on all three counts, it may be not guilty on all three counts, it may be guilty on one or two and not guilty on the other, or not guilty on one and two and guilty on the other. Just let the verdict specify your decision with respect to each of the three counts.

One other matter which I call to your attention. Each of the three counts specifies a value. Count One, the conspiracy count, says that the named persons and the persons unnamed because not known conspired that they would steal, and so forth, property having a value of at least $6,800.00. You are not bound by any actual figure in that count except as to whether or not it exceeds the sum of $100.00. If you find that they conspired that they would commit this crime with respect to property having in the aggregate a total value of more than $100.00 then you need not specify any amount with respect to Count One. A verdict of guilty as to Count One would mean that it was more than $100.00.

With respect to Counts Two and Three the same situation exists. That is, if you should find the defendant guilty of Count Two and that the property therein specified exceeded $100.00 in value a verdict of guilty would be self-explanatory and you need not specify any value, but in that instance if you were to find the defendant guilty of Count Two and find that the property referred to therein had a value not in excess of $100.00 let your verdict so specify by saying "and that the property therein referred to had a value" or "did not have a value in excess of $100.00." One hundred dollars is a dividing line. Of course, if you find the defendant not guilty you are not concerned with any value on any count on which you find him not guilty.

If you find him guilty and that the property referred to in the count you are dealing with had a value in excess of $100.00 then you don't have to specify any amount, but if it did not have a value in excess of $100.00 let your verdict so specify with respect to the count to which you make that finding.

Now, Members of the Jury, the Marshal will take you to your room and if there should be any further instructions he will bring you back in just a moment. If there are to be no further instructions he will take to you in just a moment the indictment and all of the documentary and physical evidence in this case. All of you now except the alternate juror—and I believe that is Mr. Holman B. Hitchcock—Mr. Hitchcock you are excused and you may go by the Clerk's office and receive your pay. The other twelve jurors will now retire to the jury room.

(Jury retired.)

By the Court:

I will hear first from the defendant.

Mr. Miller:

Your Honor, the only exception and request that we would have would be that our written requests that have already been submitted, which Your Honor has considered, I feel confident that it would be needless for me to pick them up and read those that the Court has not charged. That's not necessary is it, sir?

By the Court:

I don't think so. You can just except to all those which I did not give.

Mr. Miller:
That is my intention, sir.

By the Court:
I believe that would be sufficient.

Mr. Miller:
Does the bill of particulars go out with the jury? It was requested to be made a part of the record and Your Honor has not specified the particular numbers that the Government specified in the bill of particulars. Now there has been some discrepancy in the testimony. For instance the defendant Wright—

By the Court:
I'm inclined to think that the bill of particulars becomes a part of the indictment unless the District Attorney has a contrary view.

Mr. Buford:
We want it sent out. We agree, Your Honor.

By the Court:
Is it necessary to bring the jury back or shall we just attach it to the indictment and let it go.

Mr. Miller:
My thought was not to bring them back just to give them a bill of particulars, but to bring them back to specify to them that before they could convict the defendant the evidence must show the items specified as to the particular count in the bill of particulars. You take, for instance, Count No. Two, I believe it is. I believe that is the Scintilla breaker assemblies, and they call it a 10-20236 and the defendant Wright testi-

fied, I believe, that he delivered a 10-20237. If that's the case then it's a fatal variance. Similarly as to the American-Bosch count. I believe that was Count Three: The defendant testified—I mean Wright testified that he delivered to the defendant a certain exhibit that we have got, and said that was it; an American-Bosch SP 5287, whereas in truth and in fact Mr. Wright testified that it was not an American-Bosch SP 5287. My only thought and request is that the jury would have to be instructed, should be instructed, that if they find the defendant guilty it must be the identical property or type of property that the Government specified. If you think that is clear to the jury all right. I don't think so, but I'm willing not to ask for them to be brought out because they have been on it long enough.

By the Court:

I'll leave that up to you. If you think I ought to bring them back and do it I will. If you do not, I will not.

Mr. Miller:

My associate sort of thinks we should, Your Honor, so I'll make the request.

By the Court:

Anything further?

Mr. Miller:

I would like to mention this for Your Honor's consideration. Four, Five, Six and Seven have been dismissed and I understand that there will be a verdict of not guilty on them, although Your Honor did not instruct the jury to that effect. I imagine when they

come back you will have to tell them they will only consider One, Two and Three, and there will be a direction of a verdict of acquittal on Four, Five, Six and Seven. Now Count Seven is the substantive charge of Overt Act 3. I don't know how we can have a verdict of not guilty on a substantive charge of Count Seven and still have Overt Act 3 considered as an overt act in finding us guilty of the conspiracy. It seems to me that the Government has abandoned it. Similarly with respect to Count Five, Overt Act Six, and Count Six, Overt Act Eight. So we are moving, Your Honor, to instruct the jury that the Government has abandoned Overt Acts 3, 6 & 8 as to Count One.

By the Court:

Let me see the bill of particulars.

By the Clerk:

That's the motion and the answer, Your Honor, response to it, I believe. Have to read one in connection with the other, I believe Judge.

By the Court:

Well now, is it any one's thought that the motion for the bill of particulars should go out?

Mr. Evans:

It will have to go be intelligible, Judge.

By the Court:

Very well. This is the first time I have seen the bill of particulars. I have heard some of you read from it.

Mr. Miller:
Is that the motion for the bill of particulars? Not the response?

By the Court:
Both of them.

Mr. Miller:
You think the motion should go out?

By the Court:
Well, I asked the question.

Mr. Miller:
Well, I don't think so, sir, but I don't know.

By the Court:
Well, you gentlemen have studied these papers. Is the response intelligible without the motion?

Mr. Miller:
I think it is sir. I'm asking that it go out and I think it is.

By the Court:
The motion, of course, is one filed by you isn't it?

Mr. Miller:
Yes, sir.

By the Court:
You object to that going out?

Mr. Miller:
No, sir, I won't say I have any objections to it.

By the Court:

The Government thinks it should?

Mr. Evans:

Yes, sir. If he has no objections to it, I think it would be more intelligible for the jury for it to go out.

By the Court:

Very well. Call the jury back.

(Jury returned to Box.)

By the Court:

Members of the Jury, one or two matters have been called to my attention with respect to which I wish to supplement my charge. You will, of course, find the defendant not guilty on Counts Four, Five, Six and Seven. I take it that was probably plain from what has been said in your presence. I believe I told you that you were considering only three counts, that is Counts One, Two and Three, but let your verdict go further and find the defendant not guilty on Counts Four, Five, Six and Seven. You need not deal at all with Counts Eight and Nine, because this defendant is not named in those counts.

One other matter is this. Counsel for the defendant before the trial of this case filed a motion for a bill of particulars. That is a remedy by which a defendant can call upon the Government to give more detailed information with respect to matters alleged in the indictment. And in response to that motion the Government filed what it calls a response to motion for bill of particulars, and that response is the bill of particulars. It is in effect an amendment to the indict-

ment. You will be concerned therefore with paragraphs 1, 2 and 3 of the bill of particulars because those paragraphs describe more particularly and minutely the property referred to in Counts One, Two and Three of the indictment. It may describe other things. I'm not going into all that they do or do not do, but I charge you that Counts One, Two and Three are in effect amended and supplemented by the paragraphs 1, 2 and 3 of the response to the motion for a bill of particulars. I charge you, of course, that the question here is whether or not the defendant did the things charged against him in Counts One, Two and Three of this indictment. The Government has the burden on proof, as I charged you, and if the defendant did the things with respect to the property described and set out and named in Counts One, Two and Three he is guilty. Otherwise he is not guilty and you will frame your verdict accordingly.

I charge you further in that connection that it is not necessary that you find that the defendant received all of the property referred to in any of these counts, or that all of the property referred to in these counts was in fact stolen. If any material part of it was stolen and received by the defendant with the requisite knowledge then he would be guilty under counts Two and Three, and of course you will find that the bill of particulars with respect to Count One does not pretend to be exhaustive but says in effect that included among the property which the defendant conspired to steal was certain property named in Count One, and in Paragraph 1 of the Bill of particulars.

So the question before you is whether or not the defendant did the things with respect to the property named in these counts as supplemented by the bill of

particulars, with the requisite intention as outlined to you in my charge. If he did he is guilty and ought to be convicted; if he did not then he ought to be acquitted.

You may now retire and make your verdict.

JUDGMENT AND COMMITMENT.

United States District Court for the Middle District of Georgia, Macon Division.

United States of America,
v. No. 7262.
Joseph Tomley.

On this 16th day of May, 1956 came the attorney for the government and the defendant appeared in person and by Counsel.

It is Adjudged that the defendant has been convicted upon his plea of Not Guilty and a verdict of Guilty of the offense of violation of 18 USC 371 in connection with 18 USC 641—Conspiracy to steal government property, as charged in Count 1 and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is Adjudged that the defendant is guilty as charged and convicted.

It is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Three (3) Years, or until he is otherwise discharged as provided by law,

It is Adjudged that.....

It is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

At Macon, Georgia.

(S.) W. A. BOOTLE,
United States District Judge.

Filed May 16, 1956.

(Title Omitted.)

Comes now Joseph Tomley, the defendant in the above-styled matter, and moves the Court to grant him a new trial upon the following grounds:

1.

The Court erred in denying defendant's motion for acquittal, made at the conclusion of the evidence.

2.

The verdict is contrary to the weight of the evidence.

3.

The verdict is not supported by substantial evidence.

4.

The Court erred in charging the jury and in refusing to charge the jury as requested.

Wherefore, Defendant prays that his above grounds for a new trial, together with any grounds that may be added by amendment, be inquired into by the Court and sustained, and a new trial be granted him.

L. EUGENE JESSUP,
(L. Eugene Jessup),

P. O. Address:
Grand Building,
Macon, Georgia.

WALLACE MILLER, JR.,
(Wallace Miller, Jr.),
Attorneys for Movant,
Joseph Tomley.

515 Persons Building,
Macon, Georgia.

Georgia,
Bibb County.

I certify I have this day served the United States with a copy of the above and foregoing motion by serving the Honorable Frank O. Evans, District Attorney of said Court.

This 16th day of May, 1956.

(S.) WALLACE MILLER, JR.

Filed May 16, 1956.

ORDER OVERRULING MOTION FOR NEW TRIAL.

(Title Omitted.)

Motion for new trial having come on for a hearing and after hearing from counsel,

It Is Considered, Ordered, And Adjudged that the same should be denied and overruled, and the same is denied and overruled.

This the 26 day of September, 1956.

(S.) W. A. BOOTLE,
United States Judge.

Filed Sept. 27, 1956.

NOTICE OF APPEAL.

In the United States Court for the Middle District of Georgia, Macon Division.

United States of America,
vs. Indictment No. 7262.
Joseph Tomley, Defendant.

Comes now Joseph Tomley, the defendant in the above styled case and, by and through his undersigned attorney at law, files this notice of appeal in the above case as follows:

1.

The name and address of appellant is Joseph Tomley, Cochran Field, Macon, Georgia.

2.

The name and address of appellant's attorney is Wallace Miller, Jr., 515 Persons Building, Macon, Georgia.

3.

The offense involved in the above matter is a conspiracy to violate the laws of the United States of America, namely, a violation of Section 371, title 18, U. S. Code, in connection with Section 641, title 18, U. S. Code; charging a conspiracy between defendant and others to violate the above laws pertaining to property of the United States of America.

4.

This notice of appeal pertains to the jury verdict of guilty, dated May 11, 1956, on the conspiracy count of the indictment, Count I thereof; to the sentence of the Court of three (3) years in the penitentiary, dated May 16, 1956, and to the order and judgment of the trial Court overruling and denying each and every ground of appellant's motion for a new trial dated September 26, 1956.

5.

Appellant appeals from the order and judgment of the trial Court overruling and denying his motion for a new trial on each and every ground thereof.

And now comes Joseph Tomley, by and through his undersigned attorney at law, and hereby appeals

to the United States Court of Appeals for the Fifth Circuit from the above stated order and judgment overruling and denying his motion for a new trial on each and every ground thereof.

JOSEPH TOMLEY,
By WALLACE MILLER, JR.,
(Wallace Miller, Jr.),
His Attorney at Law.

This 29 day of September, 1956.

I certify I have notified and served the United States of America with the above "notice of appeal" by serving a copy thereof personally upon the Honorable Frank O. Evans, United States Attorney in and for said Court.

WALLACE MILLER, JR.,
(Wallace Miller, Jr.),
Attorney for Appellant.

This 29 day of September, 1956.

Filed Sept. 29, 1956.

ORDER AS TO ORIGINAL PAPERS OR EXHIBITS.

(Title Omitted.)

On motion of counsel for the defendant, and upon good cause shown, it appearing that the original of the Government's exhibits numbered 3, 10, 14, first, nineteenth and twentieth pages of Government's exhibit numbered 9, the original of defendant's exhibits

numbered 9, 24, 25, 26, 27, 28, 29, 30, 31, 32, 36a, 36b, 36c, 36d and 37 should be and it is hereby ordered that they shall be sent by the Clerk of this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in lieu of copies, by first-class United States mail, with a request to the Clerk of said Court of Appeals that they be returned to this Court after the case has been finally determined and adjudicated on its appeal.

So ordered, this 6 day of October, 1956.

(S.) W. A. BOOTLE,
United States Judge.

Filed Oct. 8, 1956.

STATEMENT OF POINTS.

(Title Omitted.)

The defendant sets out below his statement of points on which he intends to rely on appeal of this case:

(1) The Court erred in denying defendant's motion for acquittal, made at the conclusion of the evidence.

(2) The verdict is contrary to the weight of the evidence.

(3) The verdict is not supported by substantial evidence.

(4) The Court erred in its charge to the jury on the defendant's substantive defense of good character.

(5) The Court erred in its charge to the jury as to the testimony of the alleged accomplice, A. J. Wright.

(6) The Court erred in its charge as to the amount of proof required to the jury and the amount of moral conviction required of the jury before they could convict as to Count 1, the conspiracy count.

(7) The Court erred in its illustration in its charge to the jury which analogized the conspiracy count in the case at bar, Count 1, to an act of armed robbery of a bank.

(8) The Court erred in failing to charge the jury the following listed written requests of the defendant, which were timely submitted to the Court in writing, and to which timely attention was called to the Court of such failure, and exception thereto was noted: The written request designated as a part of the record on appeal and in the record on appeal, being specifically shown and disclosed as paragraphs numbered 5, 5-a and 5-b in defendant's "Designation of Contents of Record on Appeal."

This 15th day of October, 1956.

(S.) WALLACE MILLER, JR.,
(Wallace Miller, Jr.),
Attorney for Defendant
Joseph Tomley.

Georgia,
Bibb County.

I certify I have this day served the United States with a copy of the above and foregoing Statement of

Points by serving the Hon. Frank O. Evans, District Attorney of said Court.

This 15th day of October, 1956.

WALLACE MILLER, JR.

Filed Oct. 19, 1956.

DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

(Title Omitted.)

Comes now Joseph Tomley, the defendant in the above-styled matter, by and through his undersigned attorney at law, and shows the following are the necessary contents of the record in this case for its appeal to the United States Court of Appeals for the Fifth Circuit:

(1) The complete indictment; plea of not guilty thereon of defendant Joseph Tomley; plea of guilty thereon of defendant Andrew Jackson Wright; verdict of the jury of guilty as to Count I, pertaining to defendant Joseph Tomley, dated May 11, 1956.

(2) Sentence of Court as to this defendant, dated May 16, 1956.

(3) Motion of Joseph Tomley for bill of particulars, filed April 20, 1956.

(4) Response and bill of particulars, filed by the Government on May 4, 1956.

(4-a) Entire charge of the Court and exceptions thereto, consisting of pages 1 through 30, inclusive.

(5) The following written requests to charge, submitted to the Court in writing before the charge of the Court was commenced in the case:

(a) Of the written request containing eight separate requests, the caption of the request; the preamble to the request; requests numbered 1, 2, 3, 5 and 6, stated in said requests as being applicable "to all counts"; and signature.

(b) Of the written request containing sixteen separate requests, the caption of the request. the preamble thereof; requests numbered 1, 2 and 14; and signature.

(6) Motion for new trial, filed May 16, 1956.

(7) Order of Court overruling defendant Joseph Tomley's motion for new trial on each and every ground thereof, dated September 26, 1956.

(8) Notice of appeal to the United States Court of Appeals for the Fifth Circuit, filed September 29, 1956.

(9) Transcript of record and documentary evidence:

(a) Testimony of Government witness Andrew Jackson Wright, in the form of questions and answers, beginning on Record page 3 and ending on Record page 77, omitting objections and statements

of Court and counsel, but including statements of identification of all exhibits, both Government and defendant.

(b) Testimony of Government witness Walter Etheridge Shuler, in the form of questions and answers, beginning on Record page 77 and ending on Record page 90, omitting objections and statements of Court and counsel, but including statements of identification of all exhibits, both Government and defendant, and including statement of Mr. Buford on page 78 and statement of Mr. Miller on pages 78 and 79.

(c) Testimony of Government witness C. V. Powell, in the form of questions and answers, beginning on Record page 91 and ending on Record page 110, omitting objections and statements of Court and counsel, but including statements of identification of all exhibits, both Government and defendant, and including statement of Mr. Buford beginning at top of page 107 and continuing for a total of nine lines.

(d) Testimony of defense witness W. G. Jenkins, in the form of questions and answer, beginning on Record page 113 and ending on Record page 129, omitting objections and statements of Court and counsel, but including statements of identification of all exhibits, both Government and defense.

(e) Testimony of defense witness J. T. Scruggs, in the form of questions and answers, beginning on Record page 130 and ending at the end of the fourth line on page 143, omitting objections and statements of Court and counsel, but including statements of

identification of all exhibits, both Government and defense, and including statement of Mr. Miller on page 131; beginning on Record page 144 through page 145, omitting objections and statements of Court and counsel, but including statements of identification of all exhibits, both Government and defense; beginning on page 147 of the Record through line twelve on page 171, omitting objections and statements of Court and counsel, but including statements of identification of all exhibits, both Government and defense; lines twenty-three, twenty-four and twenty-five on page 171 of the Record; last two lines on page 172 through line twenty on page 181, omitting objections and statements of Court and counsel, but including statements of identification of all exhibits, both Government and defense; beginning on page 182 of the Record through page 200, omitting objections and statements of Court and counsel, but including statements of identification of all exhibits, both Government and defense.

(f) Testimony of defense witness M. D. Strickland, in the form of questions and answers, commencing on page 201 of the Record and ending on page 217, omitting objections and statements of Court and counsel, but including statements of identification of all exhibits, both Government and defense.

(g) Testimony of defense witness J. C. Thomas, commencing on Record page 217 and ending on page 226, in the form of questions and answers, omitting objections and statements of Court and counsel, but including statements of identification of all exhibits, both Government and defense, and including statements of the Court, Mr. Evans and Mr. Miller, com-

mencing on line nineteen, page 220, running through line three on page 221.

(h) Testimony of defense witness Donald B. Ritts, in the form of questions and answers, commencing on page 226 of the Record and ending on page 255, omitting objections and statements of Court and counsel, omitting question and answer ruled out by the Court beginning on line nine of page 247 and running through line eighteen on page 247, but including statements of identification of all exhibits, both Government and defense, and including statements of Mr. Evans, Mr. Miller and the Court on pages 228 and 229 of the record, statements of Mr. Evans, Mr. Miller and the Court on page 233 of the Record, statement of Mr. Evans, Mr. Miller and the Court, beginning on line twenty-two on page 236 and running through line five on page 237.

(i) Statements of the Court and Mr. Evans on page 256 of the Record.

(j) Testimony of defense witness Hugh Galbraith, in the form of questions and answers, commencing on page 256 of the Record and running through page 306 of the Record, but excluding the last question on page 283 of the Record and omitting objections and statements of Court and counsel, but including statements of identification of all exhibits, both Government and defense, and including statements of Mr. Evans, Mr. Miller and the Court on page 257 of the Record.

(k) Testimony of defense witness Lewis L. Lenteni, in the form of questions and answers, commencing on page 307 of the Record and ending on page

350, omitting objections and statements of Court and counsel, but including statements of identification of all exhibits, both Government and defense.

(l) Testimony of defendant Joseph Tomley, in the form of questions and answers, commencing on page 350 of the Record and ending on page 546, omitting objections and statements of Court and counsel, but including statements of identification of all exhibits, both Government and defense.

(m) Testimony of defense witness Donald B. Ritts, in the form of questions and answers, recalled by the defendant, commencing on page 546 of the Record and ending on page 558, omitting objections and statements of Court and counsel, but including statements of identification of all exhibits, both Government and defense.

(n) Testimony of defendant Joseph Tomley, recalled by the Government for further cross-examination, in the form of questions and answers, commencing on page 559 of the Record and ending on page 562, omitting objections and statements of Court and counsel, but including statements of identification of all exhibits, both Government and defense.

(o) Testimony of Government witness James Stauble, in the form of questions and answers, commencing on page 562 of the Record and ending on page 607, omitting objections and statements of Court and counsel, but including statements of identification of all exhibits, both Government and defense.

(p) Testimony of Government witness C. V. Powell, recalled by the Government, in the form of questions and answers, commencing on page 607 of the Record and ending on page 621, omitting objections and statements of Court and counsel, but including statements of identification of all exhibits, both Government and defense.

(q) Testimony of defense witness Mrs. Mabel T. Turner, in the form of questions and answers, commencing on page 621 of the Record and ending on page 637, omitting objections and statements of Court and counsel, but including statements of identification of all exhibits, both Government and defense.

(10) Order of Court pertaining to transmittal of certain original documents introduced in evidence to the United States Circuit Court of Appeals for the Fifth Circuit.

Documentary Evidence.

(1) Facsimile of Government's Exhibit No. 2, attached hereto, captioned "Government's Exhibit No. 2."

(2) Government's Exhibit No. 3 in its original form.

(3) Original of Government's Exhibit No. 10.

(4) A facsimile of Government's Exhibit No. 11, attached hereto.

(5) Original of Government's Exhibit No. 14.

(6) Original first page, original page 19 and original page 20 of Government's Exhibit No. 9.

(7) Original of Defendant's Exhibit No. 9.

(8) A summary of Defendant's Exhibits Nos. 10 through 18, 19 through 19-w (excluding Defendant's Exhibit No. 19-c), 20 through 22, attached hereto and identified "Summary of Defendant's Exhibits Nos. 10 through 18, 19 through 19-w (excluding Defendant's Exhibit No. 19-c) 20 through 22."

(9) Original of Defendant's Exhibit No. 24.

(10) Original of Defendant's Exhibit No. 25.

(11) Original of Defendant's Exhibit No. 26, made up of Joe Tomley invoice No. 211; photostat of Western Union Telegraph Company receipt; check No. 188 of Donald B. Ritts, payable to Cash, in the amount of $874.39; photostat of Aero-Industries, Inc. No. 1262, payable to D. B. Ritts, in the amount of $874.39; photostat of Air Lines air bill No. 07-MCN 120507; photostat of check of Donald B. Ritts No. 187, payable to American Air Lines, in amount of $528.06; and check of Aero-Industries, Inc. No. 1315, payable to D. B. Ritts, in the amount of $528.06.

(12) Original of Defendant's Exhibit No. 27, consisting of invoice of Joe Tomley No. 219; photostat of Aero-Industries, Inc. check No. 1286, payable to J. Tomley, in the amount of $400.00; and photostat of Roadway Express, Inc. invoice from Joe Tomley to Consolidated Aircraft, No. 411-533707.

(13) Original of Defendant's Exhibit No. 28, consisting of Joe Tomley invoice No. 238; photostat of check of Airco No. 676, payable to J. Tomley, in the amount of $700.00; and photostat of Roadway Express, Inc. invoice No. 411-537576.

(14) Original of Defendant's Exhibit No. 29, consisting of Joe Tomley invoice No. 215; photostat of check of Aero-Industries, Inc. No. 1284, payable to Joe Tomley, in the amount of $651.85; and photostat of Eastern Air Lines, Inc. air bill No. 07-MCN 120515.

(15) Original of Defendant's Exhibit No. 30.

(16) Original of Defendant's Exhibit No. 31.

(17) Original of Defendant's Exhibit No. 32.

(18) Original of Defendant's Exhibit No. 36-a, 36-b, 36-c and 36-d.

(19) Original of Defendant's Exhibit No. 37.

The record in this case on appeal, as designated by the foregoing, contains the complete record and all the proceedings and evidence in the case, excepting certain physical, tangible items of airplane ignition parts, such as breaker assemblies, springs, magnetos, motors, etc., which would be cumbersome if made a part of the record, and which defendant verily believes would serve no good purpose in determination of this appeal, and excepting motions of counsel, objections of counsel, rulings of Court on objection and colloquies between Court and counsel, all of which is matter not essential to the decision of the

questions presented by the appeal; all in compliance with Rule 75 of the Rules of Civil Procedure made applicable to the Rules of Criminal Procedure, and Rule 75 of the Rules of the United States Court of Appeals for the Fifth Circuit.

This 15th day of October, 1956.

JOSEPH TOMLEY,
By (S.) WALLACE MILLER, JR.,
(Wallace Miller, Jr.),
His Attorney at Law.

P. O. Address:
515 Persons Building,
Macon, Georgia.

I certify I have this day served the United States of America with a copy of the above and foregoing "Designation of the Contents of Record on Appeal" by serving the Hon Frank O. Evans, United States Attorney in and for said Court.

This 15th day of October, 1956.

(S.) WALLACE MILLER, JR.,
(Wallace Miller, Jr.),
Attorney for Defendant
Joesph Tomley.

Filed Oct. 19, 1956.

GOVERNMENT'S EXHIBIT NO. 2.

"You Have Heard of Robert E. Lee. This is Tomley. 25706. Joe Tomley. Sells, Most Anything, Buys. Central Hotel, Macon, Ga."

All of the above was on a card, appearing to be a business card, and all of the written matter was printed, with the exception of the number "25706," which was written in ink.

GOVERNMENT'S EXHIBIT NO. 11.

A small slip of paper bearing the following written in ink:

"?3403-T.O."

Summary of Defendant's Exhibits Nos. 10 through 18, 19 through 19-w (excluding Defendant's Exhibit No. 19-c), 20 through 22.

All of these exhibits are on the identical form as Defendant's Exhibit No. 9, with the information typed on the following exhibits as follows:

Exhibit No.	Shipped to	Description	Quantity	Dollar Amt.	Date
10	Joe Tomley	103. Elec. Parts—Motors, switches, gaskets, resistors, wire, brackets	150 lb.	$ 17.87	7/16/54
11	Joe Tomley	358. A/C valve pins, retainer, spring, washer fitting (used & unused)	150 lb.	12.99	8/ 3/54
12	Joe Tomley	487. A/C & Elec residue	300 lb.	12.99	8/23/54
13	Joe Tomley	505. A/C Magnetos, AF # 4704-10-21400-7 (Used)	30 Ea.	91.25	8/30/54
14	Joe Tomley	850. A/C Parts—spark plug, amplifier, pump, fan, valve, motor, transformer (Used)	400 lb. (Approx)	18.99	9/15/54
15	Joe Tomley	961. A/C Parts—rod assy., screw, spring, coupling, guard assy., bracket, etc. (Used & Unused)	200 lb. (Approx)	11.45	9/23/54
16	Joe Tomley	934. A/C Carburetors 28 ea., A/C magnetos 8 ea. (Used)	36 ea.	81.99	10/11/54
17	C & T Sales	2861. A/C parts, flanges, conduit, indicator, elec. fuel gauge, box, lead, etc. Used & Unused	300 lb.	13.50	2/17/55
18	C & T Sales	27-47 Aircraft parts—springs, distributor, section cable, sleeves, washers, bushings, connectors, etc. Used & Unused (2 pallets)	900 ea.	46.99	2/17/55
19	C & T Sales	2851. A/C Parts, booster, pump fuel booster, cylinder MLG act, valve fuel cont. coupling, etc. Used—Salvage	400 lb.	29.90	2/17/55
19A	C & T Sales	27-31 Housings, magneto Used Salvage	400 lb.	16.99	2/17/55
19B	C-T Sales Co.	3175 Aircraft Parts—pumps, spiders, connectors, etc. Salvage Used	600 lb.	147.77	3/ 2/55
19D	C-T Sales Co.	3172 Aircraft Parts—gauge tube, hook, wire, gaskets sprockets, bearings, frame, track assyl., etc. Surplus Used & Unused (3 pallets)	1250 lb.	54.50	3/ 2/55
19E	C-T Sales Co.	3125 12 ea. Cylinders breathing oxygen D2, springs rings Salvage Used	200 lb.	19.99	3/ 2/55
19F	C-T Sales Co.	3315 Aircraft Parts—Valve Assy Pump assy Surplus Used	900 lb.	137.77	3/15/55
19G	C-T Sales	3256 Governor Assy. Surplus Used	111 ea.	47.77	3/14/55

Exhibit No.	Shipped to	Description	Quantity	Dollar Amt.	Date
19H	C-T Sales	3255 Aircraft Parts—separators, pumps, bolts, etc. Surplus Used	700 lb.	157.77	3/14/55
19I	C-T Sales	3373 Aircraft parts—valves; pump-fuel; body; tube; liners; gears, studs; clamps; plugs; separator; etc. Salvage Used & Unused (5 pallets)	1500 lb.	547.77	3/16/55
19J	C-T Sales	3365 Aircraft Parts—pumps; lead assy; tank; valves; chamber; etc. Surplus Used (2 pallets)	1500 lb.	577.77	3/17/55
19K	C-T Sales	3360 Aircraft Parts—268 ea. pumps; 92 ea. filters Surplus Used	360 ea.	176.77	3/17/55
19L	C-T Sales	3235 Aircraft Parts—elements assy., filter, tank, etc. Salvage (2 pallets)	800 lb.	19.99	3/18/56
19M	C-T Sales	3316 Aircraft Parts—Pump Assy.; Governors, etc. Surplus Used	1250 lb.	237.77	3/15/55
19N	C-T Sales	3362 Aircraft Parts—strainers; valves; etc. Salvage Used	500 lb.	77.77	3/18/55
19O	C-T Sales	3328 Aircraft Parts—valves; plugs; covers; generators; plugs; pumps; etc. Surplus Used & Unused (4 pallets)	1600 lb.	377.77	3/18/56
19P	C-T Sales	3464 Signal Parts—mountings, box, cord, switch, motor, etc. Surplus Used & Unused (2 pallets)	1100 lb.	76.99	3/29/55
19Q	C-T Sales	3413 Aircraft Parts—pump, struts, filters, mounts, etc. Surplus Used & Unused	350 lb.	56.99	3/29/55
19R	C-T Sales	3437 Aircraft Parts—flaps, piston, filters, strainers, etc. Surplus Used (3 pallets)	1000 lb.	177.99	3/30/55
19S	C-T Sales	3439 Signal Parts—120 ea. Kits maint. parts 3F3901-47/MP, cable, starter, brush, etc. Surplus Used & Unused (2 pallets)	1800 lb.	119.99	3/30/55
19T	C-T Sales	3541 Aircraft Parts—valves, pumps, adapters, bearings, gaskets, rod, rings, bolts, etc. Salvage	1500 lb.	77.77	4/4/55
19U	C-T Sales	3644 A/C Parts—tank, valves scut. relief, panels, etc. Surplus Used & Unused (2 pallets)	500 lb.	104.99	4/12/55
19V	C-T Sales	3920 Aircraft Parts—valves; pumps, cylinders; etc. Surplus Used	500 lb.	121.99	5/2/55
19W	B.T. Jones	3438 Aircraft Parts—strainer assy. Salvage Used (2 pallets)	750 ea.	189.00	3/28/55
20	C-T Sales, Inc.	317 Misc. Aircraft Parts (Surplus Used & Unused—Sold as is, where is all or none basis). Code 13	Lot 1		3/29/55
21	Calair International	323 Misc. Aircraft Parts (Surplus—Used & Unused—Sold as is, where is, all or none basis) Code 13	Lot 1		4/5/55
22	Joe Tomley	8-140 A C Magneto assy. (Unused)	22 ea.	79.79	9/14/54

Filed Oct. 19, 1956.

ORDER AS TO ORIGINAL PAPERS OR EXHIBITS.

(Title Omitted.)

On motion of the United States Attorney, and good and sufficient cause having been shown,

It Is Considered, Ordered, And Adjudged that the Clerk of this Court shall transmit to the United States Court of Appeals for the Fifth Circuit the original of Government's Exhibits 1 through 14, with request that the Clerk have said Court of Appeals return said exhibits to the Clerk of this Court after the case has been finally determined and adjudicated on appeal; and it is

Further Ordered that the Clerk of this Court incorporate this order in the record that is transmitted to the Court of Appeals for the Fifth Circuit.

So Ordered this the 22nd day of October, 1956.

(S.) W. A. BOOTLE,
United States Judge.

I hereby certify that I have mailed a copy of the foregoing order to the Honorable Wallace Miller, Jr., of counsel for the appellant, Joseph Tomley, by mailing a copy of the same to his post office address, to wit, Persons Building, Macon, Georgia.

This the 22nd day of October, 1956.

(S.) FLOYD M. BUFORD,
(Floyd M. Buford),
Assistant U.S. Attorney.

Filed Oct. 22, 1956.

CLERK'S CERTIFICATE.

In the District Court of the United States, Middle District of Georgia, Macon Division.

Joseph Tomley, Appellant,
vs. Criminal No. 7262.
United States of America, Appellee.

United States of America,
Middle District of Georgia.

I, JOHN P. COWART, Clerk of the District Court of the United States in and for the Middle District of Georgia, do hereby certify that the foregoing and attached 684 pages contain a true, full, complete and correct copy of the original record and all proceedings had in the above stated cause, as specified in the designation of contents of record on appeal of counsel herein and as the same remains of record and on file in the Clerk's Office of the said District Court at Macon, Georgia.

In Witness Whereof, I have hereunto set my hand and the official seal of the said District Court at Macon, Georgia.

This the 23rd day of October, 1956.

JOHN P. COWART,
(John P. Cowart),
Clerk, U. S. District Court,
Middle District of
Georgia.

(Seal)

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No. 809

In The
UNITED STATES COURT OF APPEALS
For The Fifth Circuit

No. 16,320

JOSEPH TOMLEY,
Appellant

v.

UNITED STATES OF AMERICA,
Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

BRIEF OF APPELLANT IN SUPPORT OF MOTION
FOR REHEARING

WALLACE MILLER, JR.,
Attorney for Appellant

Of Counsel:
MILLER, MILLER AND MILLER
515 Persons Building
Macon, Georgia

U. S. COURT OF APPEALS
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EDWARD W. WADSWORTH
CLERK

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In The
UNITED STATES COURT OF APPEALS
For The Fifth Circuit

No. 16,320

JOSEPH TOMLEY,
Appellant

v.

UNITED STATES OF AMERICA,
Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

BRIEF OF APPELLANT IN SUPPORT OF MOTION
FOR REHEARING

I.

Requests to Charge

This Court in its decision ruled that there was no error, nor basis for error in the Trial Court's failure to charge appellant's timely written requests to charge (Specifications of Error 4 (a) through 4 (h), inclusive, appellant's brief, pages 11, 12, 13, 14, 15 and 16) because appellant did not, pursuant to Rule 30, Federal Rules of Criminal Procedure, "even attempt to give the *grounds* for his complaint that the court

below had failed to give the instructions that he had requested."

On page 4 of this Court's decision in this case there is *stated in part* defendant's exception and objection to the failure of the court to charge the written requests, *but there is stated none of the rulings of the Trial Court thereto.*

We set forth the entire exceptions and objections and the court's rulings thereon, as follows:

"By the Court:

I will hear first from the defendant.

Mr. Miller:

Your Honor, the only exception and request that we would have would be that our written requests that have already been submitted, which Your Honor has considered, I feel confident that it would be needless for me to pick them up and read those that the Court has not charged. That's not necessary is it, sir?

By the Court:

I don't think so. You can just except to all those which I did not give.

Mr. Miller:

That is my intention, sir.

By the Court:

I believe that would be sufficient."

It is respectfully submitted that this Court, in rendering its decision with respect to such requests to charge, overlooked and failed to apply the full context of the objections and exceptions and the court's rulings thereon.

The exceptions and objections to omissions of the Trial Court to charge requests to charge, and the pointing out distinctly of the grounds thereof, as required by Rule 30 of the Federal Rules of Criminal Procedure, *is for the benefit of the trial court* in charging the jury.

When the Trial Court ruled that defendant's counsel need say no more, and stated to such counsel, "you can except to all those (requests to charge) which I did not give." and when counsel stated that was his intention, and the court ruled, "I believe that would be sufficient," such requirements of Rule 30 were met.

It would appear to be an almost conclusive presumption that the lower court in so ruling was fully cognizant of the contents of the requests and the defendant's contentions with respect thereto, as to their applicability to the law and facts of the case.

With respect to the statement above made, that compliance with such provisions of Rule 30 is for the benefit of the trial court, we first cite a case from the Sixth Circuit which applies old Rules 46 and 51. which we believe are substantially consolidated in present Rule 30.

> "Rule 51 should be read in conjunction with Rule 46. The purpose of these rules is to inform the trial judge of possible errors, that he may have an opportunity to consider his rulings and if necessary correct them, and where it appears in the record that the point urged on appeal was called to the attention of the trial court in such manner as to clearly advise it as to the question of law involved, that is sufficient. Sweeney v. United Features Syndicate, 2 Cir., 129 F. 2d 904; Hall v. Aetna Life Insurance Company, 8 Cir. 86 F. 2d 447, 451. In our opinion we should

consider the objection of the appellant to the instruction given."

Williams v. Powers, 6 *Cir.*, 135 *F.* (2*d*) 153, 156

We again reiterate that the Trial Court, in ruling on defendant's objections as it did, ruled that the court was fully cognizant with the requests and defendant's contentions with respect thereto, and that further particularity with respect to pointing out the objections and grounds of complaint was not necessary and was dispensed with; in fact, further particularity after such ruling of the court would have been contrary to and in the face of the Trial Court's ruling.

"We think that in these circumstances, no waiver of the error resulted from any failure to request a cautionary charge. *The objection previously made amply sufficed to make known to the court that these defendants would assert he had erred.* Fed. Rules Crim. Proc. rule 30, 18 U.S.C., does not require a lawyer to become a chattering magpie." (Emphasis added)

U.S. v. Kelinson., 2 *Cir.* 205 *F.* (2*d*) 600, 601, 602

As in the last mentioned case, we respectfully submit that the defendant's objections and the court's ruling thereon "amply sufficed to make known to the judge that (the) defendant would assert he had erred."

In fact, in the instant case, the Trial Court recognized that the defendant was going to contend he had erred, when the court stated "You can just except to all those which I did not give," and counsel stated, "That is my intention, sir."

Further in support of this contention, we cite the following District of Columbia Court of Appeals case:

"In assigning error as to any part of a charge, *or for any omission therefrom*, as for failure to charge in accordance with a request, it is essential

that a distinct objection be stated, with the ground upon which it is based. Mundy v. United States, 1949, 85 U.S. App. D.C. 120,176 F. 2d 32; Felton v. United States, 1948, 83 U.S. App. D.C. 277, 170 F. 2d 153, certiorari denied 335 U.S. 831, 69 S.Ct. 18, 93 L. Ed. 385; United States v. Sutter, 7 Cir., 1947, 160 F. 2d 754. The requirement is for the sound and practical purpose of affording the court an opportunity to make any additions or corrections that may be deemed appropriate before the jury retires to consider of its verdict. Cf. Palmer v. Hoffman, 1943, 318 U.S. 109, 119, 63 S.Ct. 477, 87 L. Ed. 645, 144 A. L. R. 719; Stillwell v. Hertz Drivurself Stations, 3 Cir. 1949, 174 F. 2d 714, 715."

Villaroman v. United States, D.C. Cir., 184 *F. (2d)* 261, 262

We do not wish to burden this brief with repetition of all the argument and authority set forth in our original brief in this case as to the requests being proper and adjusted to the evidence and the defendant's position taken at the trial and the prejudicial effect of failure to charge the requests, and, therefore, respectfully request the Court to refer to such original brief therefor.

However, there are certain facts and authority we wish to point out and emphasize, with the Court's indulgence, with respect to Specification of Error 4 (f) (pertaining to the admitted arrangement or agreement the defendant had with his co-indictee who pleaded guilty and turned State's evidence), and defendant's contention that the court's general charge permitted the jury to find the defendant guilty on his admitted agreement or arrangement.

With respect to this Specification of Error, this Court's decision stated in part, on page 6, as follows:

"We think that appellant's contention is more fanciful than real, and that no prejudice resulted from the failure to give this charge, for the reason that the court's charge when considered as a whole was eminently fair . . . "

To learned jurists and counsel, a lengthy charge in a Federal conspiracy case may read and sound as simple as the story of Little Red Riding Hood, but to the jury, made up of housewives, farmers, businessmen and others not versed in the intricacies of conspiracy law, no contention outside of absurdities should be termed "fanciful" with respect to the influence of a given state of facts upon a juror's mind in arriving at a verdict.

We stated in all sincerity in our original brief, and state here again, that the failure of the court to charge the request set forth in Specification of Error 4 (f) was prejudicial and was calculated to permit the jury to find the defendant guilty for his arrangement or agreement with his co-indictee for the latter to inform the defendant when desirable material would go to salvage for sale, which, though probably unscrupulous and unethical, was not criminal.

Although we submit that this request met all of the rules pertaining to requests, it was timely and adjusted to the evidence and couched in proper language, it did not have to meet such rules.

This request brought to the attention of the court quite forcefully, we submit, the contention of the defendant that the only agreement or arrangement he had with his co-indictee was that as set forth in such request, and the court was bound to charge the same when it was brought to its attention, even without a request.

"Where evidence presents a theory of defense and the court's attention is particularly directed to

it, it is reversible error to refuse to give *any* charge on such theory ((Emphasis supplied)."

Calderon v. U.S. 5 *Cir.*, 279 *F.* 556 (Citing 180 U.S. 356, 361)

"Defendants are indeed entitled to have presented to the jury, by appropriate instructions, their defensive theories, which are supported by the evidence in the case, and failure to submit them when properly requested may constitute reversible error."

Jenkins v. U.S., 5 *Cir.*, 59 *F.* (2*d*) 2, 3

And the Third Circuit has similarly announced this rule as follows:

"Where timely request is made for instructions which correctly propound the law, and which are warranted by the pleadings and evidence, the court must give them unless they are covered by general instructions or by the general charge, and failure so to do requires reversal, unless it is non-prejudicial. (Citing 5 CJS, p. 1155 and eleven Circuit Court cases)"

Gold v. U.S., 3 *Cir.*, 102 *F.* (2*d*) 350

We wish further to re-emphasize the prejudicial error in the failure of the court to charge defendant's request which was set out in Specification of Error 4 (b), and which was as follows:

"Further, in connection with the contention of the Government that A. J. Wright was an accomplice of the defendant, I charge you that you would not be authorized to convict the defendant on the testimony of *Wright alone*, unless you find and determine that Wright's testimony produced the fullest and most positive conviction of the truth, and from

Wright's testimony you are satisfied to a moral and reasonable certainty, and beyond a reasonable doubt, of the guilt of the defendant." (Emphasis added).

We recognize the rule in the Fifth Circuit that no corroboration of an accomplice's testimony is necessary for a conviction, though we respectfully submit this rule is not universal throughout the country.

However, we do believe that it is the universal rule throughout the country that a conviction in a criminal case requires a jury's moral conviction beyond a reasonable doubt before they can convict, whether the evidence is that of an accomplice or otherwise.

The above request was based upon this requirement of moral conviction of the jury and upon the further premise that without the testimony of A. J. Wright no conviction would be authorized, and thus the jury was required to believe Wright's testimony as to the guilt of the defendant beyond a reasonable doubt before they could convict on his testimony alone.

We submit that the failure of the court to charge this request was highly prejudicial and erroneous, for it deprived the defendant of having the jury know that they would have to believe the testimony of a confessed criminal beyond a reasonable doubt before they could convict on it alone.

"Ordinarily the failure of the court to charge that the testimony of an accomplice should be received with great caution is not assignable as error, in the absence of a request so to charge. (Citing cases)

"But it is the better practice to so instruct in any event, and *a refusal to do so when requested is error*. We think the instruction asked was a proper one under the circumstances of this case. Ordinarily, the requirement that the jury should be convinced

beyond a reasonable doubt that the testimony of an accomplice is true would be objectionable and would warrant refusal; *but in the instant case proof of the sale depended entirely upon the testimony of Josephine West, and unless the jury believed that testimony beyond a resonable doubt, they could not properly return a verdict of conviction.* (Emphasis supplied)

Lett v. U.S., 8 *Cir.*, 15 *F.* (2*d*) 686

II.

Errors or Defects in Court's Charge Affecting Substantial Rights of Defendant

A.

Charge on Good Character of Defendant

This Court, in its decision with respect to Specification of Error 1, complaining of the Court's charge on good character of the defendant, held that this specification of error was without merit because no objection or exception was taken to the charge at the trial (as provided by Rule 30 of Federal Rules of Criminal Procedure), and further held that this specification was not one which the Court should on its own motion notice.

We respectfully submit that, although no exception or objection was taken to this charge of the court during the trial, the charge did violate substantial rights of the defendant, and that this Court should take notice of it.

> "In exceptional circumstances, *especially in criminal cases,* appellate courts, in the public interest, may, by their own motion, notice errors to which no exception has been taken, if the errors are obvious or if they otherwise seriously affect the *fairness,*

integrity or public reputation of judicial proceedings. (Emphasis supplied)"

U.S. v. Atkinson, 297 *U.S.* 157, 56 *S. Ct.* 391, 392, 80 *L. Ed.* 555

In the following Fifth Circuit Court of Appeals case this Court held that a similar charge of the trial court was prejudicial, and reversed a conviction because the charge of the court in that case did not authorize good character testimony alone to create a reasonable doubt and therefore authorize an acquittal.

"The court below instructed the jury: . . .
'if the evidence with regard to good character, to good reputation, is sufficient *when considered with all the other evidence in the case to create* in your mind a reasonable doubt of his guilt then it is your duty to acquit him upon *that evidence, including* that of good character.' (Emphasis added) The problem narrows therefore to whether this instruction fairly apprised the jury that in some circumstances' . . . such testimony *alone* . . . may be enough to raise a reasonable doubt of guilt . . . ' (Emphasis added . . .

" . . . On this record, showing a long-time employment with the City of Jacksonville and a life otherwise free from crime or arrests of any nature, we are unable to say that the omission in the judge's charge did not result to Holland's prejudice . . .

"Reversed and remanded for a new trial."

Holland v. U.S. 5 *Cir.,* 245 *F.* (2*d*) 341, 342, 343

It is true that in the last mentioned case the defendant did submit to the court a written request to charge on good character, and his second assignment of error was to the refusal of the court to give the instruction.

We cannot distinguish the prejudice to Holland in the last mentioned case of the trial court in that case failing to charge that good character can engender a reasonable doubt and authorize an acquittal from the prejudice to Tomley in the instant case from the court's failure to so instruct the jury; for we do not believe it can legitimately be said that the prejudice to Holland arose out of the failure of the court to charge a request. The Fifth Circuit Court of Appeals in the Holland case did not hold that the failure to charge the written request was prejudicial to Holland, but that the charge actually given by the court worked the prejudice to Holland.

As a matter of fact, the charge of the court in the Tomley case on good character was more prejudicial to Tomley than the charge of the court to the jury in the Holland case was to Holland. In the Tomley case the trial court deprived Tomley of any benefit whatsoever of the defense of good character when the trial court stated: "In other words, a jury would not be authorized to acquit because of good character"; whereas, in the Holland case the charge of the trial court did not deprive Holland of any defense as to good character, but informed the jury that good character evidence, when considered with all the other evidence, could generate a reasonable doubt; whereas, the true rule is that good character alone may engender a reasonable doubt in some circumstances.

As in the Holland case, Tomley, a man of 49 years of age, has had "a life otherwise free from crime or arrests of any nature."

In the following case from the Third Circuit there does not seem to have been any request to charge filed, nor any objection made.

> "The defense relied heavily upon character testimony in its effort to make the jury believe that the accused rather that (sic) Hutchins was telling the truth. Concerning this type evidence, the court

charged: 'Now, members of the jury, there has been character evidence offered here. You will weigh that character evidence along with all of the other substantive evidence in the case. Character evidence of its own weight could work an acquittal. If, after hearing all of the evidence, you still have a doubt in your mind, and it is a reasonable doubt, character witnesses then coming into play could work an acquital, but again, members of the jury, character is what we are as distinguished from reputation, which is what people know us to be. There are many who walk around prating heavenly praises, but all the while having the heart of the devil himself. So that sometimes we enjoy a reputation until we are found out.' At the end of the charge the court in the presence of the jury agreed to the correctness of an amplifying and corrective statement made by defense counsel to the effect that character evidence is relevant at all stages of their deliberations and may cast such light upon the case as to persuade the jury that the accused should be acquitted." The case was reversed.

U.S. v. Cumberland 3 *Cir.*, 200 *F.* (2*d*) 609, 610

It will be noted that in the last mentioned case, the Cumberland case, the court in its charge to the jury first advised the jury that character evidence alone could work an acquittal, then took it back by disparaging remarks against character evidence. In the instant case the Trial Court advised the jury that character evidence could generate a reasonable doubt of the guilt of the defendant (thus authorizing his acquittal), and then advised the jury that they would not be authorized to acquit the defendant because of good character.

As we read the Cumberland Case, it is a case where the Circuit Court of Appeals, although it is not so stated, took notice of this error under Rule 52 (b).

In the following Third Circuit Court of Appeals case we are unable to determine the status of whether objections were taken at the trial as to the charge on character evidence.

The court in that case stated:

> "The third error, asserted by the appellants . . . relates to the charge of the court below on the part played in the ultimate determination of guilt by the character evidence adduced on their behalf. The jury was instructed as follows:
>
> " 'Some of the defendants have produced what are known as reputation witnesses. The evidence which they gave is valid evidence and must be considered by you with all of the other evidence and may of itself be the basis for a reasonable doubt. But it must not be considered separate and apart from all the other evidence, *nor should reputation evidence alone bear with you against overwhelming evidence indicative of guilt.*
>
> " 'It must be considered with all of the other evidence and weighed with that." (Emphasis supplied.)
>
> "The italicized portion of the quoted charge is attacked here. The argument is that that statement destroys the effect of an otherwise proper charge that the character evidence must be considered along with all the other evidence in the case and when so considered may generate a reasonable doubt."
>
> *U. S. v. Klass*, 3 *Cir.*, 166 *F.* (2*d*) 373, 378, 379

The Third Circuit Court went on to hold that this charge was reversible error.

The charge in the Klass case is almost identical to the charge in the instant case as to the final result; that is, the first

part of the character charge was proper, but then at the end both charges took away from the defendants all the benefit of any character evidence.

We respectfully submit that this charge of the Trial Court on character evidence violated a substantial right of the defendant Tomley and was highly prejudicial to him, and that he is entitled to a new trial because of such prejudicial error.

B.

The court charged the jury as follows:

> "To illustrate a little further, suppose that when we walk down out of this building we should see two men with guns rush into the bank and point their guns at the cashier and take the money out of the vault and run away with it, and that's all we know about that transaction. Well, you couldn't prove that they had got together and agreed, either in writing or orally, that they were going to rob a bank, but we would know that they were in it together, that they were co-operating with each other, that they were acting in concert, and that therefore they understood between themselves what it was they were going to do. That is what an agreement means in connection with a conspiracy case."

True, no exceptions were taken to this charge at the trial, but we respectfully submit that the analogizing of the instant case with one of armed bank robbery as set forth in our original brief, was prejudicial to the defendant Tomley, because it was calculated, at least, to cause the jury to view the evidence in the case as one similar to, and as grave as, armed bank robbery.

Particularly is this true in view of the failure of the court to charge the jury the requests of defendant that it did not

charge, and in view of the fact that the only evidence against defendant Tomley was the testimony of A. J. Wright, who had pleaded guilty and had turned State's evidence.

We respectfully submit that this error is substantial and affected substantial rights of the defendant, and that this Court should take notice of it under Rule 52 (b), and under the authorities cited heretofore.

Respectfully submitted,

WALLACE MILLER, JR.,
Attorney for Appellant

Post Office Address:
515 Persons Building
Macon, Georgia

I certify I have served appellee with a copy of the foregoing brief of appellant for a rehearing by delivering a copy to the Hon. Frank O. Evans, United States Attorney in and for the United States District Court for the Middle District of Georgia, Macon Division.

This _____ day of January, 1958.

WALLACE MILLER, JR.,
Attorney for Appellant

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JOHN T. FEY, Clerk

United States Court of Appeals For The Fifth Circuit

No. 16,320

JOSEPH TOMLEY,
Appellant

v.

UNITED STATES OF AMERICA
Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

MOTION FOR REHEARING

WALLACE MILLER, JR.,
Attorney for Appellant

U. S. COURT OF APPEALS
FILED
JAN 15 1958
EDWARD W. WADSWORTH
CLERK

Of Counsel:

MILLER, MILLER AND MILLER
515 Persons Building
Macon, Georgia

In The

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UNITED STATES OF AMERICA,
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APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

MOTION FOR REHEARING

Comes now Joseph Tomley, appellant in the above-styled case, within the time fixed by the rules of this Court, and files this his motion for a rehearing to the judgment of this Court in this case dated December 26, 1957, and respectfully moves this Court for a rehearing in said case upon the following grounds:

1.

In its judgment this Court ruled that the Specifications of Error of appellant based upon his timely written requests to charge which the Trial Court did not give in charge are without merit because "defendant merely restated his request, but did not even attempt to give the *grounds* of his complaint that the court below had failed to give the instructions that he had requested"; and, consequently appellant failed "to comply with Rule 30 of the Federal Rules of Criminal Procedure . . ."

On page 4 of this Court's judgment in this case there is set forth *in part* what took place between the Trial Court and defendant with respect to defendant's exceptions to the Trial Court's failure to charge his submitted written requests. Following is the entire context of these exceptions and the Trial Court's response:

"By the Court:

I will hear first from the defendant.

Mr. Miller:

"Your Honor, the only exception and request that we would have would be that our written requests that have already been submitted, which Your Honor has considered, I feel confident that it would be needless for me to pick them up and read those that the Court has not charged. That's not necessary is it, sir?

By the Court:

"I don't think so. You can just except to all those which I did not give.

Mr. Miller:

"This is my intention, sir.

By the Court:

"I believe that would be sufficient."

Record, pp. 542, 543

It is respectfully submitted that this Court in rendering its judgment in this case overlooked and failed to apply the above ruling of the Trial Court to the effect that it was not necessary for defendant to go further and state "the grounds for his complaint" pertaining to the court's failure to charge such written requests.

On page 4 of this Court's judgment in this case there is this statement:

"It appears that at the close of the testimony the defendant presented a number of written instructions, and asked the court to give them to the jury."

It is not believed that the record discloses when the requests were submitted to the Trial Court, but regardless of when submitted, it is respectfully contended that in the absence of a contrary showing (and none is in the record), it is to be presumed that the Trial Court read such requests, and from them alone, the defendant's opening statement to the jury and argument to the jury, the court fully understood and comprehended the defendant's position and contentions with respect to the involved requests to charge as applied to the facts and law of the case.

As shown in our accompanying brief in support of this motion, it is respectfully contended that so much of Rule 30 of the Federal Rules of Criminal Procedure as requires that before error may be assigned on omissions from the trial court's charge there must be objections thereto, and the grounds of objection must be distinctly stated, is for the benefit of the trial court in its charge to the jury; and, in view of the ruling of the Trial Court that no further exception need be made to its failure to charge the written requests, but that the defendant could "just except to all those which I did not give," no further objection of statement of grounds of objection would be required.

In fact, any further statement of objections or grounds of complaint would have been contrary and repugnant to the announced ruling of the Trial Court that nothing more be said to "except to all those (meaning written requests to charge) which I did not give."

It is, therefore, respectfully submitted that so much of this Court's judgment is erroneous as holds without merit, and therefore not reversible error, nor basis for consideration

of reversible error, appellant's Specifications of Error numbered 4 (a), 4 (b), 4 (c), 4 (d), 4 (e) (appellant's brief, pages 11 and 12, pertaining to testimony of an accomplice), 4 (f) (appellant's brief, page 13, concerning a special defense and contention of defendant as to the arrangement and agreement defendant had with his co-inflictee to acquire property), 4 (g) (appellant's brief, page 14, pertaining to criminal intent and the amount of evidence and conviction required by the jury before a verdict of guilty would be authorized), and 4 (h) (appellant's brief, pages 15 and 16, pertaining to a special defense and contention of defendant as to his acquiring property under circumstances possibly amounting to a conversion with no criminal intent.)

This Court, with respect to Specification of Error 4 (h), as we read this Court's decision, states on page 9 that "appellant now for the first time" makes a point on the failure of the court to charge this request.

It is respectfully submitted that the record discloses that this point was made at the trial when it was submitted as a written request, and exceptions were taken on the failure of the court to so charge, as above set out, and this point was submitted upon the motion for new trial to the Trial Court.

2.

As this Court stated, no exceptions were taken at the trial concerning Specification of Error 1 (the Trial Court's charge on good character of defendant, appellant's brief, page 7) and Specification of Error 3 (court's charge analogizing case to one of armed bank robbery, appellant's brief, page 10). It is respectfully submitted that both these charges, individually and collectively, were "errors or defects affecting substantial rights" (Rule 52 (b), Federal Rules of Criminal Procedure) of the defendant, and should be so considered by this Court, although counsel for defendant was not sufficiently astute to take exception at the trial.

It is respectfully contended that the judgment of this Court holding that such errors were not within the intent and purview of Rule 52 (b), Federal Rules of Criminal Procedure and applicable court decisions applying such rule is erroneous.

WHEREFORE, a rehearing in this case is respectfully requested.

WALLACE MILLER, JR.,
Attorney for Appellant

Post Office Address:
515 Persons Building
Macon, Georgia

GEORGIA, Bibb County

I, Wallace Miller, Jr., certify that I am counsel for the appellant and that the foregoing motion for rehearing is presented in good faith and not for delay, and that I verily believe said motion for rehearing should be granted.

This _____ day of January, 1958.

WALLACE MILLER, JR.,
Attorney for Appellant

I certify I have served appellee with a copy of the foregoing motion for a rehearing by delivering a copy of the same to Hon. Frank O. Evans, United States Attorney in and for the United States District Court for the Middle District of Georgia, Macon Division.

This _____ day of January, 1958.

WALLACE MILLER, JR.,
Attorney for Appellant

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

NO. 809

JOSEPH TOMLEY,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

WALLACE MILLER, JR.
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IN THE

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NO. _____

JOSEPH TOMLEY,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Joseph Tomley, petitioner in the above-styled case, respectfully prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Fifth Circuit entered in the above case, and respectfully shows:

OPINION IN COURT BELOW

The opinion of the court below (R. 573-) has not been officially reported, and the original opinion, dated Dec. 26, 1957, is reproduced in the Appendix to this petition. There was no opinion of the court below on the denial of petitioner's motion for rehearing, but the same was denied without opinion on January 30, 1958.

JURISDICTION

The judgment of the court below was entered on December 26, 1957, on the original appeal of the case to that court, and such court denied petitioner's motion for rehearing in the case, without an opinion, on January 30, 1958.

The statutory provision invoked to confer on this Court jurisdiction to review the judgment in this case is 28 USC, Sect. 1254 (1).

QUESTIONS PRESENTED FOR REVIEW

(1) Did the United States Court of Appeals for the Fifth Circuit err in holding that the requirement of Rule 30, Federal Rules of Criminal Procedure, [providing that no party may assign as error any omission from the court's charge (in this case, failure to charge timely written requests to charge) unless he states the particular grounds of his objection,] is not met when objections are duly made to the trial court's failure to so charge and the trial court in substance rules that no more need be said as to the grounds of objection, as was done in this case, in view of the fact that the reported decisions are unanimous that such particularity is for the benefit of the trial court?

(2) Did the United States Court of Appeals for the Fifth Circuit err in holding that an erroneous charge of the court, as applied to the circumstances of this case, on the substantive defense of good character of the defendant was not such an error under Rule 52 (b), Federal Rules of Criminal Procedure, that the appellate court should notice such erroneous charge in the absence of objection, pursuant to Rule 30, Federal Rules of Criminal Procedure?

(3) Did the Circuit Court of Appeals for the Fifth Circuit err in holding that *no* corroboration of an accomplice's testimony was necessary?

STATUTES INVOLVED

Two rules of the Federal Rules of Criminal Procedure are involved in this case, as follows:

"Rule 30. Instructions.

" . . . No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objections out of the hearing of the jury."

Rule 30, *Federal Rules of Criminal Procedure, Title* 18 *USCA, p.* 309

"Rule 52. Harmless Error and Plain Error.

"(b) Plain Error. Plain errors or defects affecting substantial rights may be noticed that were not brought to the attention of the court."

Rule 52(*b*), *Federal Rules of Criminal Procedure Title* 18 *USCA, p.* 548.

STATEMENT OF THE CASE

Petitioner, a businessman dealer in war and armed services surplus material, was tried before the United States District Court for the Middle District of Georgia, Macon Division and a jury on a seven-count criminal indictment, charging him with a conspiracy to violate 18 USC, Sect. 641 and with six separate substantive counts of violation of 18 USC, Sect. 641. (R. 2).

One Andrew Jackson Wright was indicted in the same indictment with petitioner, Wright being indicted on the conspiracy count and on two substantive counts of violation of 18 USC, Sect. 641, separate and distinct from those charging petitioner (R. 2). Petitioner was acquitted of four substantive counts by direction of the trial court and acquitted by the jury of the remaining substantive counts and found guilty on the conspiracy count, and a sentence of three years in the penitentiary was imposed (R. 11; 549).

Andrew Jackson Wright, a civilian employee of Warner Robins Air Materiel Area, Macon, Georgia, pleaded guilty to all three counts charged against him and turned "State's evidence" against petitioner (R. 10; 19).

The testimony of Accomplice Wright was the only evidence upon which a verdict of guilty would be authorized. (This is assuming that the rule of the United States Court of Appeals for the Fifth Circuit is correct, that an accomplice's testimony needs no corroboration to authorize conviction.) Certain written requests to charge were timely submitted to the court pertaining to the testimony of Accomplice Wright, which were not given in charge: such requests, for the convenience of the Court, are set out as follows:

"(1) Further, in connection with the contention of the Government that A. J. Wright was an accomplice of the defendant, I charge you that you would not be authorized to convict the defendant on the testimony of Wright *alone*, unless you find and determine that Wright's testimony produced the fullest and most positive conviction of the truth, and from Wright's testimony you are satisfied to a moral and reasonable certainty, and beyond a reasonable doubt, of the guilt of the defendant. (emphasis added)

"(2) I charge you that an accomplice is a competent witness; but unless the testimony of an accomplice is corroborated, a jury should rarely, on the testimony of an accomplice *alone*, convict a defendant, unless the jury, after receiving and weighing the testimony of an accomplice with extreme caution and scrutinizing it with great care and suspicion, concludes that the accomplice's testimony produces the fullest and most positive conviction of the truth, and are satisfied to a moral and reasonable certainty, and beyond a reasonable doubt, that the defendant on trial is guilty. (emphasis added)

"(3) I charge you that in cases where an accomplice testifies against a defendant on trial, a jury should not place too much reliance on the testimony of an accomplice, unless the jury finds that the testimony of an accomplice has been corroborated by other evidence, separate and independent of the evidence given by the accomplice. (R. 518: 519)

Accomplice Wright testified that he had an arrangement with petitioner whereby petitioner would advise Wright of property from Warner Robins Air Materiel Area that petitioner wanted Wright to get for petitioner and that Wright would steal it, deliver it to petitioner, and petitioner would pay Wright for it. (R. 24 - 30).

Petitioner testified that he had no such arrangement or dealing with Wright and committed no criminal act, but that he did have an arrangement with Wright, the arrangement being that Wright, being in a position of employment so to do, would advise petitioner when certain merchandise which petitioner had previously asked Wright to be on the lookout for was being moved to the Surplus Disposition Department of Warner Robins Air Materiel Area, so that petitioner would know about the same and bid accordingly at legal sales of surplus, and know what he was getting (R. 285 - 288).

There was voluminous evidence that sales at the Surplus Department of Warner Robins Air Materiel Area were like buying a "pig in a poke," because the material was placed in big boxes with no clear identification, and a given box would contain most anything, regardless of the identification on the box (R. 167; 173; 200 - 229; 177; 178 - 182; 283.)

By knowing what items were in which box or where they were placed for sale, that he wanted, petitioner would submit a bid commensurate with the items therein, and in most cases would be successful in his bid. (R. 287).

Concerning this admitted arrangement of petitioner with Accomplice Wright, petitioner submitted to the trial court the following timely written request, which was not given, to assure petitioner that the jury would not consider his admitted arrangement a criminal act, authorizing conviction:

> "(4) I charge you that any arrangement that you find the defendant might have had with Mr. A. J. Wright whereby Mr. Wright was to inform the defendant when certain items of merchandise were to be moved or placed for sale by Warner Robins Air Materiel Area, Surplus

Department, could not be considered by you in this case as unlawful, and you would not be authorized to convice the defendant of any such arrangement; any such arrangement would not violate any criminal law that might be involved in this case." (R. 520)

Also, pertaining to this admitted arrangement, and other evidence that merchandise was acquired by petitioner and other dealers from the Surplus Depot at Warner Robins Air Materiel Area contrary to Air Force regulations because of negligence of the Warner Robins Surplus Depot agents and employees, and because it might be considered criminal by the jury, whereas in fact it was not criminal (though maybe unethical, by virtue of petitioner obtaining an advantage over other bidders by knowledge of the contents of the boxes), petitioner submitted the timely written request to charge, which was not given, as follows:

"(5) I charge you that every knowing conversion of property is not stealing, and that there might be knowing conversion of property without intent to defraud. A knowing conversion without intent to defraud is not a crime. Conversion of property may include misuse or abuse of property.

"In this connection, I charge you that if you find the defendant came into possession of the property involved knowing he was unauthorized to have possession of the property, but so came into possession of the property without criminal intent to defraud the United States Government, and thereafter disposed of some of it, if he did dispose of it, without intent to defraud the United States Government, then I charge you that he committed no crime, and his conviction would not be authorized." (R. 521)

Petitioner timely excepted to the failure of the trial court to charge the above five requests to charge, and the trial court ruled as follows:

"By the Court:

I will hear first from the defendant.

Mr. Miller:

Your Honor, the only exception and request that we would have would be that our written requests that have already been submitted, *which Your Honor has considered*, I feel confident that it would be needless for me to pick them up and read those that the Court has not charged. That's not necessary is it, sir? (Emphasis added)

By the Court:

I don't think so. You can just except to all those which I did not give.

Mr. Miller:

That is my intention, sir.

I believe that would be sufficient." (R. 542)

The Circuit Court of Appeals in its opinion brushed aside any merit in the omitted requests to charge and the resulting prejudice to petitioner in the following language:

Appellant did not, pursuant to Rule 30, Federal Rules of Criminal Procedure "even attempt to give the *grounds* for his complaint that the court below had failed to give the instructions that he requested." (Appendix pg. 22)

Petitioner placed his character in issue in the trial of the case, testifying that he was 49 years of age and had never been tried for a criminal offense before, nor indicted or charged with a criminal offense before, nor even arrested before in his life.

The trial court charged the jury on this substantive defense of good character as follows:

"Good character is a positive substantive fact and may of itself be sufficient, if it is proven to exist, to generate in the minds of the jury a reasonable doubt as to the guilt of a defendant. If this jury *should think*, from all the testimony together, that notwithstanding the evidence of good character the defendant nevertheless did what he is charged with doing, then you ought to convict him. *In other words, a jury would not be authorized to acquit because of good*

character. The law contains no provision like that. But *if the jury thinks* the defendant actually committed the offense which he is charged with committing, whether he has good character or not, he ought to be convicted. (Emphasis supplied)" (R. 531)

No exception was taken to this charge at the trial of the case, and exception was taken for the first time in petitioner's motion for new trial filed with the trial court. (R. 551)

As to the exception to this character charge, the Circuit Court of Appeals for the Fifth Circuit held that "no such case is presented here" as to justify the application of Rule 52(b), Federal Rules of Criminal Procedure.

REASONS FOR GRANTING WRIT

A

The applicable portions of Rule 30 are strictly for the benefit of the trial court; and all that is necessary for a party to do is "to make known to the court that the defendant would assert that the court had erred," as was held by the Circuit Court of Appeals for the Second Circuit in the following case:

> "We think that in these circumstances, no waiver of the error resulted from any failure to request a cautionary charge. *The objection previously made amply sufficed to make known to the court that these defendants would assert he had erred.* Fed. Rules Crim. Proc. rule 30, 18 USC. *does not require a lawyer to become a chattering magpie.* (Emphasis supplied)".

U.S. v. Kelinson, 2 *Cir.* 205 *F.* (2*d*) 600, 601, 602

Petitioner, in most emphatic and plain language, made it known to the trial court that he was contending the court had erred when the court stated "you can just except to all those which I did not give," and petitioner's counsel stated in reply "That is my intention, sir."

The Circuit Court of Appeals for the Sixth Circuit has also ruled that all that is required under Rule 30 is for the trial court to be advised of the point involved.

"Rule 51 should be read in conjunction with Rule 46. The purpose of these rules is to inform the trial judge of possible errors, that he may have an opportunity to consider his rulings and if necessary correct them, *and where it appears in the record that the point urged on appeal was called to the attention of the trial court in such manner as to clearly advise it as to the question of law involved, that is sufficient.* Sweeney v. United Features Syndicate, 2 Cir., 129 F. 2d. 904; Hall v. Aetna Life Insurance Company, 8 Cir. 85 F. 2d. 447, 451. In our opinion we should consider the objection of the appellant to the instruction given."
Williams v. Powers, 6 Cir., 135 *F. (2d)* 153, 156

As set forth hereinbefore (this petition, page 7), petitioner's counsel in substance offered to point out more explicitly the request excepted to and the grounds of the objections of failure to charge the same, and asked if that was necessary by the question "That is not necessary, is it, sir?" to which the court replied "I don't think so. You can just except to all those which I did not give." Any formal statement of the grounds of objections would have been contrary and repugnant to the court's ruling that no more was necessary to be said.

We submit that it is a conclusive presumption, nothing to the contrary appearing, that, in view of the court's ruling, the court was fully cognizant of petitioner's grounds of objection and applicability of the request to the law and facts and defendant's contention of defenses at the trial, either singly or conjunctively, from discussions of the request, petitioner's opening statement to the jury and petitioner's argument to the jury.

The Circuit Court of Appeals for the District of Columbia, citing as authority a case of this Supreme Court, has held that Rule 30 is for the benefit of the trial court alone:

"In assigning error as to any part of a charge, *or for any omission therefrom*, as for failure to charge in accordance with a request, it is essential that a distinct objection be stated, with the ground upon which it is based. Mundy v. United States, 1949, 85 U.S. App. D.C. 120, 176 F. 2d 32; Felton v. United States, 1948, 83 U.S. App. D.C. 277,

"170 F. 2d 153, certiorari denied 335 U.S. 831, 69 S. Ct. 18, 93 L. Ed. 385; United States v. Sutter, 7 Cir., 1947, 160 F. 2d. 754. *The requirement is for the sound and practical purpose of affording the court an opportunity to make any additions or corrections that may be deemed appropriate before the jury retires to consider of its verdict.* Cf. Palmer v. Hoffman, 1943, 318 U.S. 109, 119, 63 S. Ct. 477, 87 L. Ed. 645, 144 A. L. R. 719; Stillwell v. Hertz Drivurself Stations, 3 Cir. 1949, 174 F. 2d 714, 715 (Emphasis added)".

Villaroman v. United States, D.C. Cir., 184 *F.* (2*d*) 261, 262

It is earnestly submitted that when a trial court rules that *no more need be said* as to objections to its charge, the requirement of Rule 30, Federal Rules of Criminal Procedure, has been fully and completely complied with, as a matter of law, whether complied with as a matter of fact or not.

If this Court should determine that the Circuit Court of Appeals for the Fifth Circuit erred in holding that Rule 30 was not complied with, then there should be determined whether or not the failure of the trial court to charge said requests resulted in such prejudice to the petitioner as to require a new trial.

The first request to charge (page 4 this petition) requested the law that the jury would not be authorized to convict on the testimony of Accomplice Wright *alone*, unless the jury believed his testimony beyond a reasonable doubt.

This charge should have been given because Wright's testimony was *all* the Government had to convict on, and, therefore, this being the only evidence authorizing a conviction, the jury was required to believe it beyond a reasonable doubt.

The Circuit Court of Appeals for the Eighth Circuit has so held:

"Ordinarily the failure of the court to charge that testimony of an accomplice should be received with great caution

is not assignable as error, in the absence of a request so to charge (Citing cases).

"But it is better practice to so instruct in any event, and a refusal to do so when requested is error. We think the instruction asked was a proper one under the circumstances of this case. *Ordinarily, the requirement that the jury should be convinced beyond a reasonable doubt that the testimony of an accomplice is true would be objectionable and would warrant refusal; but in the instant case proof of the sale depended entirely upon the testimony of Josephine West, and unless the jury believed that testimony beyond a reasonable doubt, they could not properly return a verdict of conviction.* (Emphasis supplied)

Lett v. U.S. 8 *Cir.*, 15 *F.* (2*d*) 686

It is very doubtful that the jury would have convicted petitioner if they had been instructed implicitly by the court, as petitioner was entitled to, that before they would be authorized to convict they would have to believe Wright's testimony beyond a reasonable doubt.

The second request (this petition, page 4), deals with the proposition of law that an accomplice is a competent witness but that a jury should not convict on such testimony *alone*, unless the jury believes such testimony, when scanned with extreme care, caution and suspicion, produces the fullest and most positive conviction of the truth, and the jury is convinced beyond a reasonable doubt of the defendant's guilt.

This Court has so ruled in a case quite similar to the instant case:

"But a felon, being also a confessed accomplice, was thus produced by the Government as a witness for the purpose of proving its case against defendant, the witness having, as it would appear in popular language, turned 'state's evidence,' at least so far as to incriminate himself together with defendant. *Without his evidence it would have been difficult if not impossible to convict the defendant.* No reflection is intended or intimated with regard to this action

on the part of the Government. It was wholly within the discretion of its law officers, and their decision ought not to be reviewed by the court. But the evidence of a witness situated as was Lorenz is not to be taken as that of an ordinary witness of good character, in a case whose testimony is generally and prima facie supposed to be correct. On the contrary, the evidence of such a witness ought to be received with *suspicion* and with the *very greatest care and caution,* and ought not to be passed upon by the jury under the same rule governing other and apparently credible witnesses. In many jurisdictions such a man is an incompetent witness unless he has been pardoned. The facts surrounding this case make it particularly important that the rule in regard to material errors should be most rigidly adhered to. (Emphasis supplied)"

Crawford v. U.S., 212 *U.S.* 183, 203

Accomplice Wright testified he had hopes of benefit and leniency because of his testimony when he testified that his telling the truth "should help me some." (R. 59) The facts of this case, like the facts mentioned in the Crawford case last above, make this case one "particularly important that the rule in regard to material errors should be most rigidly adhered to."

The third request (this petition, page 4) deals with the rule of law that testimony of an accomplice should not be given unlimited credence because of its untrustworthiness, without corroboration.

This rule was stated by the Circuit Court of Appeals for the Fourth Circuit in the following case:

"It is the general principle in considering credibility of witnesses that the testimony of an accomplice is open to *suspicion,* or may be actuated by self-interest, and such testimony should be carefully weighed and tested before giving it unlimited credence. As a general principle, it is not safe to accept (it) as conclusive, *unless it is corroborated* by testimony of other persons or facts and circumstances clearly tending to prove it.' " (Emphasis supplied)

Gormley v. U.S., (*4th Cir.*) 167 *F.* (*2d*) 454, 457

The Circuit Court of Appeals for the Fifth Circuit in this case ruled *no corroboration* of the accomplice's testimony was necessary (Appendix this brief, p. 21). This ruling of the Circuit Court is in direct conflict with the following decisions of this Court:

> "It is undoubtedly the better practice for courts to caution juries against too much reliance upon the testimony of accomplices, *and to require corroborating testimony before giving credence to them*. But no such charge was asked to be presented to the jury by any proper request in the case, and the refusal to grant the one asked for was not error." (Emphasis added)
>
> *Holmgren v. U.S.*, 217 *U.S.* 509, 523. 54 *L. Ed.* 861

The rule requiring corroboration, as announced by the United States Supreme Court, is the rule in the Tenth Circuit.

> "Where conviction is sought on basis of testimony of accomplices, jury should be cautioned that testimony of accomplices must be carefully scrutinized, weighed with great caution, and that too much reliance should not be placed upon it unless corroborated. (Citing many cases):
>
> *Johns v. U.S.*, (10*th Cir.*) 227 *F.* (2*d*) 374 (2)

The fourth request (this petition, p. 5) presented the vital defense of the defendant that his admitted arrangement with Wright was not criminal and that this arrangement alone would not authorize a conviction.

The absence of this charge to the jury allowed the jury to convict on the admitted arrangement, which was not criminal.

This Court has ruled that a defendant is entitled to a full charge on his defenses and the law relating thereto as applied to the evidence of the case:

> "It is well settled the defendant has a right to a full statement of the law from the court, and that a neglect to give such full statement, when the jury consequently fall into error, is sufficient reason for reversal. The numerous decisions to this effect are cited in Wharton on Criminal Law, vol 3, sec. 3162, 7th ed. The chief object contem-

plated in the charge of the judge is to explain the law of the case, to point out the essentials to be proved on the one side and the other, and to bring into view the relations of the particular evidence adduced to the particular issues involved."

Bird v. U.S., 180 *U.S.* 356, 361

The Circuit Court of Appeals for the Fifth Circuit has itself so ruled in two cases:

"Where evidence presents a theory of defense and the court's attention is particularly directed to it, it is reversible error to refuse to give *any* charge on such theory. (Emphasis supplied)"

Calderon v. U.S., (*5th Cir.*) 279 *F.* 556 (Citing 180 U.S. 356, 361

"Defendants are indeed entitled to have presented to the jury, by appropriate instructions, their defensive theories which are supported by the evidence in the case, and failure to submit them when properly requested may constitute reversible error."

Jenkins v. U.S., (*5th Cir.*) 59 *F.* (2*d*) 2, 3

The fifth request (this petition, p. 6) presents the proposition of law announced by this Court in the case of *Morissette v. U.S.* 342 *U.S.* 246, 96 *L. Ed.* 288, that every knowing conversion is not necessarily a criminal conversion.

The evidence was voluminous that at surplus sales at the Surplus Department of Warner Robins Air Materiel Area many items were sold contrary to Air Force Regulations, with knowledge by the buyers of the surplus, including petitioner, due to negligence and carelessness of Air Force personnel. (R. 167; 173; 200 - 229; 177; 178 - 182; 283)

This may amount to civil law conversion, but does not amount to a criminal act of conversion. This charge was also applicable to the admitted arrangement defendant had with Wright, and illegally permitted the jury to convict on such evidence not authorizing a conviction.

"Knowing conversion within the meaning of 18 USC, Section 641, requires more than knowledge that the defendant was taking the property into his possession. He must have had knowledge of the facts, though not necessarily the law, that made the taking a conversion . . . .
" . . . . It is not difficult to think of intentional and knowing abuses and unauthorized uses of Government property that might be knowing conversions but which could not be reached as embezzlement, stealing or purloining . . . . "

Morissette v. U.S., 342 *U.S.* 246, 96 *L. Ed.* 288

B.

The charge of the trial court on the defense of good character (this petition, p. 7) was erroneous, for it did not authorize in any way evidence of good character *alone* to raise a reasonable doubt of the guilt of petitioner, as this Court, the Fifth Circuit Court and other Circuit Courts have held was the rule.

"Whatever may have been said in some of the earlier cases, to the effect that evidence of good character of the defendant is not to be considered unless the other evidence leaves the mind in doubt, the decided weight of authority now is that good character, when considered in connection with the other evidence in the case, may generate a reasonable doubt. The circumstances may be such that an established reputation for good character, if it is relevant to the issue *would alone create a reasonable doubt*, although without it the other evidence would be convincing." (Emphasis added)

Edington v. U.S., 164 *U.S.* 361, 366.

The same rule prevails in the following Circuits:

Second Circuit: *U.S. v. Quick*, 128 *F.* (2*d*) 832

Third Circuit: *U.S. v. Klass et al.*, 166 *F.* (2*d*) 373

It is also the rule announced by the Fifth Circuit in the case of *Holland v. U.S.*, 245 *F.* (2*d*) 341:

In a Seventh Circuit case a charge almost identical with the effect of the charge in the instant case was held reversible error.

In our case the trial court charge: "In other words, the jury would not be authorized to acquit because of good character." In the Seventh Circuit case mentioned the trial court charged: "However, the mere fact that a defendant may have had a good reputation prior to this time should not be used by you as an excuse to acquit him in this case." In that case the Circuit Court of Appeals for the Seventh Circuit held:

> "Certainly the latter portion of the charge if standing alone is erroneous. *That admonition to the jury makes the use of good character evidence meaningless.* It would be an empty gesture if it could not be considered by the jury and utilized in a proper case for the purpose of acquittal . . . But such evidence could be used as an excuse (we think 'reason' is a better word) for a verdict favorable to the defendant." (Emphasis supplied)

U.S. v. Semenuik, (*7th Cir.*) 193 *F.* (*2d*) 508-509

Was the erroneous charge on character evidence "a plain error affecting substantial rights" of petitioner, to be noticed on appeal pursuant to Rule 52 (b), Federal Rules of Criminal Procedure?

The gravity of this erroneous charge on good character is set forth in a quite similar case from the Third Circuit:

> "It is especially appropriate that the jury be adequately instructed with respect to character evidence where, as here, the evidence against the defendant consists entirely of testimony of self-confessed accomplices. See *Egan v. United States,* 52 *App. D.C.* 384, 287 *F.* 958, 968, 969, and *Jones v. United States,* 53 *App. D.C.* 138, 289, *F.* 536, 539. In *Nanfito v. United States,* 8 *Cir.,* 20 *F. 2d* 376, 379, the court said that 'It should be observed that in a case in which the government relies chiefly for its prosecution upon the evidence of admitted accomplices . . . *it is important that the jury be specifically instructed as to the proper consideration*

to be given evidence of good character.' (Emphasis supplied)"

U.S. v. Quick, (*3rd Cir.*) 128 *F.* (*2d*) 832, 835, 836

This Court has set forth the rule that, particularly in criminal cases, errors regarding the fairness of a trial will be so noticed.

"In exceptional circumstances, *especially in criminal cases,* appellate courts, in the public interest, may, of their own motion, notice errors to which no exception has been taken, if the errors are obvious or if they otherwise seriously affect the *fairness,* integrity or public reputation of judicial proceedings. (Emphasis supplied)"

U.S. v. Atkinson, 297 *U.S.* 157, 56 *S. Ct.* 391, 392, 80 *L. Ed.* 555

C.

Summary of Conflict of Decisions

(1) The decision of the Circuit Court of Appeals for the Fifth Circuit in this case that Rule 30, Federal Rules of Criminal Procedure was not complied with is in conflict with the following decisions:

U.S. v. Kelinson, (*2nd Cir.*) 205 *F.* (*2d*) 600

Williams v. Powers, (*6th Cir.*) 135 *F.* (*2d*) 153

Villaroman v. U.S., (*Dist. of Columbia*) 184 *F.* (*2d*) 261

(2) The decision of the Circuit Court of Appeals for the Fifth Circuit that an accomplice's testimony needs no corroboration is in conflict with the following decisions:

Gormley v. U.S., (*4th Cir.*) 167 *F.* (*2d*) 454

Holmgren v. U.S., 217 *U.S.* 509, 54 *L. Ed.* 861

Johns v. U.S., (*10th Cir.*) 227 *F.* (*2d*) 374

(3) The decision of the Circuit Court of Appeals for the Fifth Circuit that the erroneous charge on good character evidence cannot be noted under Rule 52 (b) is in conflict with:

U.S. v. Quick, (*3rd Cir.*) 128 *F.* (*2d*) 832

U. S. v. Atkinson, 297 *U.S.* 157, 56 *S. Ct.* 391, 392, 80 *L. Ed.* 555

U.S. v. Semenuik, (*7th Cir.*), 193 *F.* (*2d*) 508

U.S. v. Klass, (*3rd Cir.*) 166 *F.* (*2d*) 373

CONCLUSION

It is respectfully submitted that this petition for writ of certiorari should be granted.

Respectfully submitted,

WALLACE MILLER, JR.
Attorney At Law for Petitioner

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Of Counsel:
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PROOF OF SERVICE

I, Wallace Miller, Jr., certify that I am the attorney of record for petitioner and I am a member of the Bar of the Supreme Court of the United States.

That on the _____ day of February, 1958, I served copies of the foregoing and attached petition for writ of certiorari, and appendix thereto attached, as follows:

(1) On the United States of America, by air mailing a copy in a properly addressed envelope, with sufficient first-class air mail postage prepaid, to the Solicitor General, Department of Justice, Washington 25, D.C.

(2) On the United States of America, by mailing a copy in a properly addressed envelope, with sufficient first-class postage prepaid, to Hon. Frank O. Evans, United States Attorney in and for the Middle District of Georgia, at his office in Room 303, United States Post Office and Courthouse Building, Macon, Georgia.

This certificate is made in compliance with the requirements of Rule 33, Revised Rules of the Supreme Court of the United States.

WALLACE MILLER, JR.

APPENDIX

OPINION
IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 16320

JOSEPH TOMLEY,
Appellant,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Middle District of Georgia.

(December 26, 1957.)

Before HUTCHESON, Chief Judge, and BORAH and CAMERON, Circuit Judges.

BORAH, Circuit Judge: The appellant, Joseph Tomley, and one Andrew Jackson Wright were indicted for conspiracy to violate 18 U.S.C. Sec. 641 and both of them were also charged with various substantive offenses including violations of the same law. Wright pleaded guilty to all counts against him. Appellant went to trial before a jury and was found guilty only of conspiracy as charged in Count One of the indictment and was sentenced thereon to imprisonment for a term of three years.

Appellant's appeal is based upon (1) certain portions of the judge's charge to the jury; (2) the court's refusal to give in charge to the jury defendant's eight requested instructions; and (3) the insufficiency of the evidence to support the jury verdict.

Appellant's first and third specifications of error which have to do respectively with the court's charge in relation to character evidence and to the illustrations used by the court in defining the offense of conspiracy are patently without substance. Criminal Procedure Rule 30, 18 U.S.C.,[1] providing that no party may assign as error the giving of or failure to give an instruction unless he objects thereto, stating distinctly the matter to which he objects and the grounds of his objection, has the force of law. Under that rule, in order to put the trial court in error, it is necessary that the defendant precisely state the grounds of his objection and that the grounds stated point out an error prejudicial to the defendant. *Estep v. United States*, 5 Cir., 223 F.2d 19, 22. The defendant did not do this here, and consequently, we are not required to consider specifications one and three. While it is true that in extraordinary circumstances we may, on our own motion, notice errors to which no exception has been taken,[2] if the errors are obvious, or if they otherwise seriously affect the fairness, integrity, or public reputation of judicial proceedings, a careful examination of the record convinces us that no such case is presented here.

With respect to the second specification of error, appellant contends that the District Judge erred in instructing the jury as follows:

> "I charge you in this connection that he is an alleged accomplice, and that you should in considering the testimony of an alleged accomplice, his testimony should be scanned

---

1 Rule 30, Federal Rules of Criminal Procedure. "At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. *No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection.* Opportunity shall be given to make the objection out of the hearing of the jury." (Emphasis added.)

2 Rule 52(b) provides that "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." *Cf. Lash v. United States*, 1 Cir., 221 F.2d 237, and *Horne v. United States*, 5 Cir., 246 F.2d 83, 86.

with great care and received with great caution, and I charge you that the jury should consider all of the facts and circumstances in the case and if by reason of the fact that he is an accomplice you would not be willing to accept any part of his testimony, then you would be authorized to disregard it. On the other hand if you think under all of the facts and circumstances of this particular case that what the alleged accomplice testitified to was true, then you would be authorized to act on his evidence and to convict on it."

With reference to this same subject matter error is also assigned to the court's failure to charge five written requests with respect to the testimony of an accomplice including the patently erroneous request that "a jury should not place too much reliance on the testimony of an accomplice, unless the jury finds that the testimony of an accomplice has been corroborated by other evidence, separate and independent of the evidence given by the accomplice." See *Burton v. United States,* 5 Cir., 175 F.2d 961; cert. denied 338 U.S. 909.

It appears that at the close of the testimony the defendant presented a number of written instructions, and asked the court to give them to the jury. At the conclusion of the court's charge counsel for the defendant made the following statement: "Your Honor, the only exception and request that we would have would be that our written requests that have already been submitted, which Your Honor has considered, I feel confident that it would be needless for me to pick them up and read those that the Court has not charged." Nothing however by way of objection was made to the court's charge, which on the subject of accomplice testimony was lacking in any statement equivalent to that in the rejected instructions. In his objection, counsel for defendant merely restated his requests, but did not even atempt to give the *grounds* for his complaint that the court below had failed to give the instructions that he had requested. Hence, there was a failure to comply with Rule 30 of the Federal Rules of Criminal Procedure which in part provides that: "No party may assign as error any *portion* of the charge or *omission* therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to

which he objects *and the grounds of his objection.*"[3] This being so, and there being no prejudicial error[4] in the courts failure to give the requested charges, appellant may not now complain of their refusal.

Similarly, and for the same reasons appellant is in no position to complain of the court's refusal to give requested instructions No. 4(f), (g), and (h). However, we have considered these specifications of error and find no merit in them.

In No. 4(f) the instruction requested was as follows:

> "I charge you that any arrangement that you find the dedefendant might have had with Mr. A. J. Wright whereby Mr. Wright was to inform the defendant when certain items of merchandise were to be moved or placed for sale by Warner Robins Air Material Area, Surplus Department, could not be considered by you in this case as unlawful, and you would not be authorized to convict the defendant of any such arrangement; any such arrangement would not violate any criminal law that might be involved in this case."

Appellant contends that the failure of the court to charge this request "illegally permitted the jury, under the general charge of the court as to an agreement under a conspiracy charge, to conclude that this simple arrangement that appellant admitted he had with Wright constituted an 'agreement' which would satisfy the agreement requirements of the conspiracy count." We think that appellant's contention is more fanciful than real and that no prejudice resulted from the failure to give this charge for the reason that the court's charge when considered as a whole was eminently fair and fully protected the rights of appellant. As to the conspiracy count the court instructed the jury in part as follows:

> "Now this indictment, which, as I said, you can read throughout if you want to, charges in substance that these two defendants Wright and Tomley, conspired among themselves and with other persons to the Grand Jurors un-

---

3 Emphasis supplied throughout.

4 See Rule 52(b), Federal Rules of Criminal Procedure, note 2 *supra*.

known, and therefore unnamed, to do certain things, namely to steal, purloin and knowingly convert to their own use, and without authority to sell, convey and dispose of property of the United States, to wit: Scintilla breaker assemblies having platinum points thereon, American-Bosch breaker point springs having platinum points, motor gun chargers, sometimes described as motor timer guns, and aircraft spark plugs having platinum points, having a value of at least $6,800.00; and to receive, conceal, and retain such property with intent to convert it to their own use and gain, knowing that said property had been and would be so stolen, purloined and converted."

In this connection the jury was instructed that they should first determine "whether or not there was an agreement among or between two or more persons, and whether or not the defendant Joseph Tomley was a party to that agreement *as alleged in the indictment*. If there was no such understanding then you would just find a verdict of not guilty on Count One." And if more need be said to demonstrate the fallacy and unreasonableness of appellant's contention we shall be content to close the discussion on this branch of the case by quoting the following additional paragraph from the court's charge:

"When I use the word 'agreement' I mean an agreement to violate the law as set out in this indictment. Of course there are a great many laws and a great many crimes under the various statutes and the conspiracy statute applies to an agreement to violate any criminal law of the United States no matter what it is. But this indictment says that these defendants agreed or had an understanding among themselves that they would violate the laws of the United States in certain respects set out here in the indictment. *I charge you, therefore, that the agreement or understanding must be an agreement to violate the law in the respect set out in this indictment itself*, that is in Count One, and in the long or first or charging part of Count One."

In No. 4(g) the charge requested was: "I charge you that before you would be authorized to find the defendant guilty

of any count in the indictment you must be satisfied to a moral and reasonable certainty, and beyond a reasonable doubt, that the defendant committed the acts charged against him, and intended by such acts to defraud the United States of America." This request might properly have been given, but the court was not obliged to accept the language suggested by counsel in framing its instructions to the jury. And appellant cannot justifiably complain where as here the request in substance was given in charge. The court (1) fully instructed the jury as to the essential elements of the crime of conspiracy which must be proved and established in order to warrant a conviction; (2) charged the jury "that in all of the counts involved in the indictment, one, two and three, a necessary element of each offense charged in the counts is criminal intent on the part of the defendant to defraud the United States of America." (3) instructed the jury that in a criminal case it is the duty and burden of the government to prove the charge that it brings against a defendant beyond a reasonable doubt; and (4) defined accurately and in some detail the term "reasonable doubt."

In No. 4(h) appellant claims that the court committed reversible error in failing to charge the following requested charge:

> "I charge you that every knowing conversion of property is not stealing, and that there might be a knowing conversion of property without intent to defraud. A knowing conversion without intent to defraud is not a crime. Conversion of property may include misuse or abuse of property.
>
> "In this connection, I charge you that if you find the defendant came into possession of the property involved knowing he was unauthorized to have possession of the property, but so came into possession of the property without criminal intent to defraud the United States Government, and thereafter disposed of some if it, if he did dispose of it, without intent to defraud the United States Government, then I charge you that he committed no crime, and his conviction would not be authorized."

Appellant argues that inasmuch as the evidence shows that he bought property from Warner Robins Air Material Area at advertised sales, with knowledge, actual or implied, that certain items were being offered for sale and sold inadvertently, or through negligence or error, the court's failure to charge the requested charge deprived appellant of a substantial defense and the benefit of a correct and applicable rule of law pertinent to the case. It may well be doubted whether the request as framed was sufficient to put the court on notice of the point which appellant now for the first time makes on appeal in view of the fact that the charge was general in scope and that appellant was not charged in Counts Two and Three, on which he was acquitted, with the substantive offense of knowingly converting property of the United States to his own use, but with the substantive offenses of receiving, concealing and retaining government property in violation of 18 U.S.C. Sec. 641. But the charge of the court covered the entire case and it was reasonably complete, fairly accurate, and sufficiently covered all of the material issues in the case. As we pointed out above, the court specifically charged that in all of the counts involved, a necessary element of each offense charged is "criminal intent on the part of the defendant to defraud the United States of America." And in the succeding paragraph, the court instructed the jury that even if it might find that the "defendant might have come into possession of the property illegally so far as the civil law might be concerned, that is got it without getting a good title to it, this alone, if that is all you find, would not place the property in his hand whereby he would be violating any law in so receiving the property and selling it." In any event, if the charge in any respect fell short of presenting Tomley's defense, it was, not such a falling short as defendant can, in view of Rule 30 and Rule 52(a), Harmless Error and Plain Error, Federal Rules of Criminal Procedure, 18 U.S.C., here complain of it. *Isgate v. United States*, 5 Cir., 174 F.2d 437, 438.

Finally, appellant claims that the verdict is not supported by substantial evidence, and is contrary to the weight of the evidence. The short answer to this contention is that the appellant as in *Ansley v. United States*, 5 Cir., 135 F.2d 207, moved for

a judgment of acquittal at the close of the Government's case, but thereafter introduced evidence in his own behalf and failed to renew his motion at the close of all the evidence. "The failure to renew operated to waive the benefit of the motion made and the question of the sufficiency of the evidence was not properly saved for review by this court."

We have considered all other contentions of counsel and find them wholly without merit. The judgment appealed from is therefore affirmed.

AFFIRMED.

MAR 23 1958
JOHN T. FEY, Clerk

No. 809

In the Supreme Court of the United States

OCTOBER TERM, 1957

JOSEPH TOMLEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
MALCOLM ANDERSON,
Assistant Attorney General,
BEATRICE ROSENBERG,
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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 20–27) is reported at 250 F. 2d 549.

JURISDICTION

The judgment of the Court of Appeals (R. 20–27) was entered on December 26, 1957. A petition for rehearing was denied on January 30, 1958. The petition for a writ of certiorari was filed on February 25, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the trial court erred in refusing various requests to charge, including one to the effect that the testimony of an accomplice must be corroborated.

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 809

JOSEPH TOMLEY, PETITIONER

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QUESTIONS PRESENTED

1. Whether the trial court erred in refusing various requests to charge, including one to the effect that the testimony of an accomplice must be corroborated.

2. Whether the trial court gave an erroneous charge on character evidence.

RULES INVOLVED

Federal Rules of Criminal Procedure, Rule 30, provides in pertinent part:

> * * * No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

Federal Rules of Criminal Procedure, Rule 52 (b), provides in pertinent part:

> * * * * *
>
> (b) Plain Error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

STATEMENT

On February 16, 1956, petitioner and Andrew Wright were indicted in the United States District Court for the Middle District of Georgia for conspiracy to violate 18 U. S. C. 641 (retaining government property known to have been stolen) and for substantive violations of the same statute (R. 2–9). Wright pleaded guilty to all counts against him (R. 10). Petitioner pleaded not guilty, went to trial before a jury and was found guilty only of the conspiracy (count one). He was sentenced to imprisonment for a term of 3 years (R. 11, 549, 550) and the conviction was affirmed on appeal (Pet. 20–27).

Wright, testifying for the Government, stated that he was a warehouseman at Robins Air Force Base located at Warner Robins, Georgia (R. 19). In November 1954, one Mr. Clot showed Wright some "breakers" (small aircraft parts) and asked Wright if he "could get hold of some of them for him" (R. 20). Clot told Wright that if he could get them he was to bring them to the Central Hotel in Macon, Georgia (R. 20). Over a period of a few days, Wright stole breakers from the air force base, stored them in his hotel room and, when he had collected a sufficient number, took them to the Central Hotel (R. 23, 24). When Wright got there, Mr. Clot pointed to the petitioner, who was also at the hotel, and told Wright to "take them to him" (R. 24). Wright took the breakers to the petitioner, and the petitioner counted them and paid Wright $80 (R. 24, 25). At the same time, petitioner asked Wright if he "could get some more of those" and he gave Wright a stock number of some other materials (scintilla breaker assemblies) which he was also anxious to have Wright procure (R. 26, 27). After stealing and collecting "a hundred or two" scintilla breaker assemblies in his apartment, Wright took them to the Central Hotel and turned them over to petitioner, who paid him $75 or $80 (R. 28, 29). Petitioner then gave Wright another stock number—the number of American-Bosch breaker springs—and said "he would like to have some of those" (R. 29, 30). American-Bosch breaker springs are packed in small glass tubes. In stealing these, Wright took the springs out of the tubes and discarded the tubes on the open air storage

lot at Robins Air Force Base (R. 86, 87). After Wright collected approximately 300 of these springs, he took them to petitioner who again paid him $75 or $80 (R. 30, 31). Later, when the F. B. I. began its investigation, Wright led an agent to the place where the tubes were discarded and turned the discarded tubes over to the F. B. I. (R. 87).

Some time after Christmas, 1954, Wright, in response to a request by petitioner, delivered to petitioner 15 motor gun chargers that Wright had stolen from the air base (R. 31, 32). At this time, petitioner also suggested to Wright that he obtain some aircraft spark plugs with platinum points, but Wright refused to steal any (R. 32, 33). When Wright was arrested by the F. B. I., he had in his possession one of petitioner's business cards (R. 33) and a "stock number" which had been given to him by petitioner (R. 34, 35).

James Stauble, a resident of the Macon Hotel in Macon, Georgia, testified that on May 9, 1955 (the night before petitioner was arrested), he received a message from petitioner and Mr. Clot that they wanted to see him (R. 454, 455). When Stauble reached Clot's room (located in the same hotel), he heard petitioner and Mr. Clot talking about a Mr. Paster (R. 457), identified by petitioner at the trial as a dealer in precious metals, including platinum, in Detroit, Michigan, and a person with whom petitioner had been doing business for about 10 years (R. 339–342). Petitioner instructed Stauble to make three telephone calls: one to a man in Detroit, Michigan; one to petitioner's sister in Pennsylvania; and one to

petitioner's lawyer (R. 457). On the call to Detroit, petitioner instructed Stauble to say nothing but "They have Joe surrounded, be careful." Stauble was then to "hang right straight up" (R. 458). On the call to petitioner's sister, Stauble was instructed to ask if "she sent the invoices down and if she did how did she send them, and to who did she send them to". If Stauble received any invoices from petitioner's sister, he was told to "destroy them period" (R. 460).

In an interview with an F. B. I. agent in September, 1955, petitioner admitted that he shipped 100 American-Bosch breaker springs to Dallas, Texas, and 754 of the same type of springs to Rochester, New York (R. 84). He stated, however, that he had purchased them at Robins Air Force Base (R. 84). He also admitted that he shipped spark plugs to Rochester, New York, and small motors, which he alleged were purchased at the Robins Air Base, to Buffalo, New York (R. 84, 85, 86).

Petitioner testified that he met Wright at Robins Air Force Base and that he invited Wright to call upon him (R. 285). He denied that he received any property from Wright, but admitted that an arrangement existed between Wright and himself (R. 285, 286). He said that, because of the lack of "clear identification" of the packed merchandise which he normally bought at Robins Air Force Base, it was difficult for a bidder to know what he was getting before he bought it and unpacked it (R. 285, 319); that, in order to make a more informed bid, he asked Wright to notify him when any material came into

the base, giving the numbers on the package (R. 285, 286); that, from the numbers, he could get a good idea as to what kind of merchandise the package contained; and that, in return for this information, he gave Wright "a couple of dollars" (R. 287.)

ARGUMENT

1. After the court charged the jury, the following colloquy took place (R. 542–543):

> By the COURT: I will hear first from the defendant.
>
> Mr. MILLER [petitioner's counsel]: Your Honor, the only exception and request that we would have would be that our written requests that have already been submitted, which Your Honor has considered, I feel confident that it would be needless for me to pick them up and read those that the Court has not charged. That's not necessary is it, sir?
>
> By the COURT: I don't think so. You can just except to all those which I did not give.
>
> Mr. MILLER: That is my intention, sir.
>
> By the COURT: I believe that would be sufficient.

In affirming the conviction, the Court of Appeals noted that petitioner's objections were not really specific enough to constitute compliance with Rule 30, F. R. Crim. P., but that, nevertheless, "we have considered these specifications of error and find no merit in them" (Pet. 23). It is thus evident that petitioner's contention that the court below erred in its interpretation of Rule 30 is not an issue in this case.

The court below was correct in its ruling that no error had been committed in refusing petitioner's requests.

a. Petitioner's first requested instruction (Pet. 4) stated that the jury would not be authorized to convict on the testimony of Wright alone, unless the jury believed his testimony beyond a reasonable doubt. This requested instruction merely stated that in order to convict petitioner the jury had to be satisfied beyond a reasonable doubt that he was guilty. This was fully covered by the following instruction, given after the court stated that the Government must prove its case beyond a reasonable doubt (R. 527):

> * * * If you have such a doubt as that you should give the defendant the benefit of the doubt and acquit him, as you should convict only if you believe him guilty beyond a reasonable doubt. A reasonable doubt is an honest, substantial doubt * * * arising either from evidence favorable to the defendant or from want of evidence on behalf of the Government. * * *

This instruction was more than adequate and there was no need to grant petitioner's request.

b. Petitioner's second and third requests were to the effect that the jury should rarely convict on the testimony of an accomplice alone, that the testimony of an accomplice should not be given unlimited credence without corroboration, and that such testimony should be scanned with extreme care (Pet. 4). The judge charged (R. 526):

> I charge you in this connection that he is an alleged accomplice, and that you should in considering the testimony of an alleged accomplice, his testimony should be scanned with great care and received with great caution * * * and if by reason of the fact that he is an accom-

> plice you would not be willing to accept any part of his testimony, then you would be authorized to disregard it. * * *

This was correct under the principles laid down by this Court. As stated in *Caminetti* v. *United States,* 242 U. S. 470, 495, although accomplice testimony should be received with caution, "there is no absolute rule of law preventing convictions on the testimony of accomplices if juries believe them."[1] See also *Nilva* v. *United States,* 212 F. 2d 115 (C. A. 8), certiorari denied, 348 U. S. 825; *Catrino* v. *United States,* 176 F. 2d 884 (C. A. 9); *United States* v. *Schwartz,* 150 F. 2d 627 (C. A. 2), certiorari denied, 326 U. S. 757.

c. Petitioner's fourth request was to the effect that the arrangement with Wright, as described in petitioner's testimony (R. 285), was not criminal and would not authorize a conviction (Pet. 5). There was no need to grant this request because the court covered this point adequately and clearly in the following instruction (R. 534):

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[1] The cases relied upon by petitioner do not support his contention that accomplice testimony must be corroborated. In *Holmgren v. United States*, 217 U. S. 509, 524, this Court merely stated that it was *the better practice* to require corroborating testimony but, as pointed out by this Court in the *Caminetti* case, the *Holmgren* case did not create an absolute rule. *Johns* v. *United States*, 227 F. 2d 374 (C. A. 10) reiterated the holding in the *Caminetti* case. And in *Gormley* v. *United States*, 167 F. 2d 454 (C. A. 4), the Court of Appeals upheld a charge which not only stated the usual rule as to caution, but said "if the testimony of an accomplice carries conviction and the jury are convinced it is true, the jury should give it the same effect as would be allowed to a witness not in any respect implicated in the offense." (P. 457.)

When I use the word "agreement" I mean an agreement to violate the law as set out in this indictment. Of course there are a great many laws and a great many crimes under the various statutes and the conspiracy statute applies to an agreement to violate any criminal law of the United States no matter what it is. But this indictment *says that these defendants agreed or had an understanding among themselves that they would violate the laws of the United States* in certain respects set out here in the indictment. I charge you, therefore, that the agreement or understanding *must be an agreement to violate the law in the respect set out in this indictment itself,* that is in Count One, and in the long or first or charging part of Count One.

The first thing you will determine in this case is whether or not there was an agreement among or between two or more persons, and whether or not the defendant Joseph Tomley was a party to that agreement as alleged in the indictment. If there was no such understanding then you would just find a verdict of not guilty on Count One, because it is necessary that there should have been an agreement or an understanding to constitute a conspiracy. [Emphasis added.]

d. Petitioner's fifth request presented the proposition of law that every knowing conversion of property is not necessarily a criminal conversion (Pet. 6). This point was also adequately covered by the trial court's charge:

* * * You must further find beyond a reasonable doubt that this defendant received the

> property involved from Andrew Jackson Wright, and at the time he received it he knew that it was stolen from the United States of America and that the defendant, with such knowledge, received the property with the intent to defraud the United States of America, for instance, by retaining it as his own or by selling it as his own.
>
> I charge you that in all of the counts involved in this indictment, one, two and three, a necessary element of each offense charged in the counts is criminal intent on the part of the defendant to defraud the United States of America. (R. 538, 539.)

2. Petitioner contends that the trial court's charge on character evidence was "plain error affecting substantial rights" (Pet. 16) and should have been noticed on appeal, pursuant to Rule 52 (b) of the Federal Rules of Criminal Procedure, because it did not advise that evidence of good character alone could raise a reasonable doubt of petitioner's guilt. The argument has no foundation, for the court explicitly charged (R. 531–532):

> Good character is a positive, substantive fact and may of itself be sufficient, if it is proven to exist, to generate in the minds of the jury a reasonable doubt as to the guilt of a defendant. If this jury should think, from all of the testimony together, that notwithstanding the evidence of good character the defendant nevertheless did what he is charged with doing then you ought to convict him. In other words a jury would not be authorized to acquit because of good character. The law contains no provision like that. But if the jury thinks the

> defendant actually committed the offense which he is charged with committing, whether he has good character or not, he ought to be convicted. But if he did not commit the offense with which he is charged, even though he may be a man of bad character in your judgment he ought to be acquitted. As I say, the character evidence is to be considered along with all of the other testimony in the case in determining whether the defendant did what he is actually charged with doing.

The charge given was in accord with the ruling of this Court in *Edgington* v. *United States*, 164 U. S. 361, 366. See, also, *Michelson* v. *United States*, 335 U. S. 469.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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